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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JOHN C. DORMAN and
WILMA L. DORMAN - PETITIONER

vs.

PAULINE JONES and
ANN EL WESTBROOK
JOHN DOE(S) 1-50 - RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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July 31, 1995

70 pp

QUESTIONS PRESENTED

Should debtors be penalized for their attorneys' errors, trickery fraud, negligence, misrepresentations and coercion, intimidation and other misconduct?

Should debtors be punished for the grossly clearly erroneous proceedings of the lower bankruptcy court's rulings, abuse of discretion, intimidation, and abuse of power?

Should debtors rights be violated under the Eighth Amendment of the United States Constitution by being unjustly cruelly punished by the unconstitutional "taking" of their family farm, estate and assets and the illegal taking of their powers as directors of a nondebtor Oklahoma Corporation, which was separate and distinct from the farm?

Does the bankruptcy court, officers of the court, U. S. Trustee, trustee and attorneys representing the trustee, the lender - the First National Bank, Hooker, lessors' attorney, bankruptcy judges abuse their power by punishing the debtors by liquidating them due to their political, religious and moral beliefs?

Should ex parte orders acquired by prohibited ex parte contacts (Rule 5001) with bankruptcy judges be vacated?

Do the bankruptcy court's judges, or trustees have the right to discriminate against debtors that are representing themselves?

Were the debtors' constitutional rights and due process of law violated by the bankruptcy judges' actions ordering petitioners to hire an attorney licensed to practice law in the state of Oklahoma, and the permanent injunction by which Judge Covey of the bankruptcy court enjoined the petitioners from filing any documents in either the bankruptcy court, the district court or the 10th Circuit court of appeals?

What are the implications when the Federal District court uses a "lottery" rotation and the petitioners' federal court cases were all transferred to Judge Thompson? Petitioners questioned his impartiality and prejudice due to his orders which concurred/sanctioned Judge Lindsey's orders of the lower bankruptcy court when Judge Lindsey admitted to the Dormans that he might have made a "mistake"?

What constitutes cruel and unusual punishment has not been defined by the Constitution.

Debtors contend that the most cruel and unusual punishment which can be inflicted upon man, most especially a family farmer is to "take" his land from him, his rightful God given inheritance, and to deprive both husband and wife and their children and grandchildren of their family farm. Deprive him of his livelihood, his hard earned property, waste the assets and proceeds of the estate.

If the liquidation plan and all of this, emotional, mental, physical and spiritual anguish, grief and misery - sickness of heart, soul and body was to punish, us Dormans, and to make us "pay dearly"; wouldn't this violate the debtors/Dormans constitutional rights by the prohibited excessive fines of the administrative and attorney fees? And wouldn't the inflicted punishment of liquidation of a farmer/rancher's farm and ranch be the most cruel and unusual punishment that a farmer/rancher could be subjected to? That a farm family could be subjected to? That a farm wife, sons and grandsons could be subjected to?

Even convicted criminals - murderers - are not made to forfeit all their property and they do not have to pay excessive fees. Criminals get more justice and have more rights than debtors do. Do debtors have to be behind bars to be in debtors' prison and to be in involuntary servitude in violation of the Thirteenth Amendment?

When Judge shows favoritism and threatens debtors with economic harm; could this under some circumstances result in extortion, per U. S. v. Miller (1965, CA4 Md) 340 F2d 421?

Was the Fourth Amendment (Unreasonable (unauthorized) searches and seizures) violated when trustee's attorney, John Hughey, changed locks on property of nondebtor corporation, entered, searched and seized all items, including exempt household and personal items of debtors, and property belonging to debtors' nondebtors' sons?

Who has mandated that the bankruptcy court's function or authority is to punish debtors for their alleged fraud and dishonesty by "taking" their property and violating the family farmers' constitutional rights under the Fifth and Eighth Amendments?

Were petitioners' constitutional rights violated by the bankruptcy court losing documents which were sent: "certified mail", "return receipt requested" and "restricted delivery" to chief Judge Richard Bohanan?

As the 10th Circuit court of appeals said that it could not determine any of our grievances involving our property, under FRCP 9 (b), 60 (b) (1) (2) (3) (4) (5) (6), made applicable by Bankruptcy Rule 9024, and FREv. 103 (2) and 401.

Is it the function and purpose of the highest court in the land to investigate the lower courts and to right the wrong;

to see that justice is upheld in the judicial system and to see that people's Constitutional rights are not violated and that the lower courts do not abuse or overreach their authority and to put an end to improper, illegal corrupt practices in its lower courts?

Was the petitioners civil rights violated by the discrimination and the segregation of them in the bankruptcy court?

Congress' policy in straight bankruptcy is that executory contracts should be rejected or deemed rejected if not affirmatively assumed is in sharp contrast to practice in Chapter XI where, in accordance with 11 USC 713(1) and Bankruptcy Rule 11-53, court must give permission for rejection of executory contracts. Re 1430 Equities, Inc. (1978, BC NY 4 BCD 806

Did the Bankruptcy Court err as a matter of law in interpreting 11 U.S.C. 365 (d) (4) to mean that both a motion and an order extending time to accept or reject unexpired leases must be entered within the 60 day time frame following the entry of the order for relief or the unexpired leases are deemed rejected?

Did the Bankruptcy Court err as a matter of law in finding that the doctrines of waiver and estoppel have no application as a matter of law to obviate the operational provisions of 11 U.S.C. 365 (d) (4) with respect to the automatic rejection of unexpired leases?

Did the bankruptcy court err as a matter of law in entering an order compelling the immediate surrender of ground subject to unexpired leases which have been deemed rejected by operation of law?

If this Court reaffirms the bankruptcy court's order as a matter of law stating that if executory contracts or leases are not reaffirmed or an extension filed within 60 days - did the bankruptcy court err in allowing the trustee to assume all the other executory contracts and leases which by law, due to default were deemed rejected?

Did bankruptcy court err in improper court proceedings and in covering up fact of unsigned or lost order? (Judge Lindsey warned UBK's associate not to use the Order as a sword; what was going on? Why all the secrets? What did Judge Lindsey mean when he admitted to the Dormans that he might have made a mistake?)

There are Orders missing in the court records and Judge Lindsey signed another order on February 8, 1993, ordering extension to February 8, 1993; (The dates are not typing errors.) Did he err in vacating it and in ordering the surrender of leased ground only two days before debtors' hearing on their confirmation plan; by striking the bar date for ballots on the very day of bar date and striking the hearing two days before confirmation; when the debtors disclosure statement was approved and the two objections to the debtors' Disclosure Statement and attached Reorganization Plan were compromised by a verbal court ordered "agreed to" signed order?

Upon review of the records in the lower courts and most especially in the bankruptcy court through February, 1993. Should grossly clearly erroneous orders and proceedings in the lower courts deny petitioners due process and deny them relief of their grievances and deny them justice and allow the unconstitutional "taking" and "distribution of their property" by declaring their appeal as being moot when the bankruptcy judges, trustee and attorneys all knew and conspired by collusion to rush and sell the land and property to third parties; knowing full well that if debtor appeals - they can demand the dismissal of appeals to the higher courts by declaring the appeal as being moot?

Petitioners are requesting the Supreme Court to review petitioners' bankruptcy case No. 92-16654-L, and vacate, reverse clearly erroneous orders and restore their property - their family farm, sons' property and Lonetree, Inc.'s property and whatever else is lawful, just, proper, right and fair.

Would the Supreme Court take into consideration that although petitioners know that there has been a clear case of abuse of the judicial process, that they are not attorneys and have been unable to retain counsel? And only in limited circumstances, such as in petitioners case should the Court take extraordinary step of setting aside confirmed judicial sale of bankruptcy? The highest Court in the land is not limited and has the power to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a party or to set aside a judgment for fraud upon the court. Therefore petitioners appeal to the Court, to move on behalf of the Dormans in Christ Jesus's most holy and precious name?

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DEEMED REJECTION PRODUCT OF COLLUSION
The following footnote of In Re Bonton Restaurant and Pastry Shop, Inc., at 52 B.R. 850

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PLAN OF LIQUIDATION A FORM OF PUNISHMENT
Drew Kershen, professor of law at Oklahoma University, agrees with the following quoted opinion. "I believe the plan of liquidation was submitted by the

Trustee as a form of punishment of the Dormans.

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TRUSTEE RENDERS REHABILITATION IMPOSSIBLE
Cowans Bankruptcy Law and Practice, Sixth Edition, St. Paul: West Publishing Company, 1994, Vol. 1 Page 182.

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CHAPTER 11: A DEATH PENALTY FOR DEBTOR
Fenning, Hon. Lisa Hill, "The Future of Chapter 11: One View From the Bench," In Annual Survey of Bankruptcy Law, 1993-1994 Edition, William L. Norton, Jr., edl, New York: Clark Boardman Callaghan, 1994, Page 113; Hon. Edith H. Jones "Chapter 11: A Death Penalty For Debtor And Creditor Interests," 77 Cornell L. Rev. 1088 (1992); Brenda Hacker Osborne, "Attorneys' Fees in Chapter 11 Reorganizations: A Case For Modified Procedures," 69 Indiana L. J. 581 (1994).

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GREAT CAUTION SHOULD BE EXERCISED BY COURT BEFORE DECIDING THERE IS NO HOPE
Re Lake Ridge Associates 163 B.R. 284 (E.D. Vir. 1994)

STATUTES

FRCP 9 (b), 60 (b) (1) (2) (3) (4) (5) (6), made applicable by Bankruptcy Rule 9024, and FREv. 103 (2) and 401.

United States Code

Title 11 Chapter 11 Reorganization
365 (d) (4)
362 Automatic Stay

UNITED STATES CONSTITUTION

First Amendment - freedoms, religion and right to petition the government.

Fourth Amendment - freedom from unreasonable search and seizure. (Trustee's attorney seized property of "out of state", nondebtor Lonetree, Inc. - changed locks, entered, searched, inventoried and seized all property, including exempt property of debtors and property that did not belong to debtors. He embezzled or allowed others to "take" personal items and sold the property and all contents excluding four items which petitioners caused not to be sold due to them finding out that he intended to either sell or trade these items. This was done without authority or court order - extreme overreaching by trustee.)

Fifth Amendment - no rights be taken away without due process of law, and that no property be taken by the government by eminent domain without just compensation. (Judges abuse of power, discretion, intimidation, biased favoritism, partiality, and permanent injunction. The judicial system should not allow the lower courts to "take" and "distribute" property when its procedures and orders have been grossly clearly erroneous as to shock the public or the court. And, the lower courts should not be able to use their selling of the property to third parties as their excuse for not seeing that justice is done; most especially when petitioners have demanded stays, restraining orders, filing of adversary suits alleging fraud, violation of their Constitutional rights, trial by jury and that major lender had breached the contract and had violated automatic stay and had committed fraud and usury. DEBTORS HAVE NOT ALWAYS RECEIVED CERTIFICATE OF SERVICE.

Sixth Amendment - In all criminal prosecutions, the right to speedy trial, impartial jury, knowledge of charges, confrontation of adverse witnesses, and the compulsory attendance of witnesses in court.

Seventh Amendment - in all civil lawsuits, the right to a jury trial "when the value in controversy shall exceed $20." (Petitioners requested jury trials because all controversary exceeded $20; bankruptcy, district and appellant courts all denied jury trials, plus oral arguments.)

Eighth Amendment - and Article II prohibition against excessive bail, excessive fines and cruel and unusual punishment.

OTHERS

28 USC 2403 (a) May be applicable

28 USC 1651 (a) Petitioners believe that the writ will aid the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers and that adequate relief cannot be obtained in any other form or from any other court.

NO.__________________________

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October term, 1995

John C. Dorman, and
Wilma L. Dorman, Petitioners

vs.

Pauline Jones, and
Ann El Westbrook, Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners, John C. Dorman and Wilma L. Dorman, respectfully requests that a writ of certiorari be issued to review the judgment and opinion of the Unites States Court of Appeals for the Tenth Circuit wherein none of petitioners grievances related to the bankruptcy proceedings involving their property could be determined by the Tenth Circuit Court of Appeals. And the lower bankruptcy court has departed from the accepted and usual course of judicial proceedings, and the Federal District Court and Tenth Court of appeals have sanctioned such a departure, as to call for an exercise of this Court's power of review, and supervision.

OPINIONS BELOW

The Court of Appeal's opinion in this matter was filed on March 31, 1995. A timely Petition for Rehearing was filed on April 13, 1995. The Court of Appeal's denial of the Petition for Rehearing was issued on May 2, 1995, and an amended denial of Petition for Rehearing was reissued on May 4, 1995; set forth in Appendix A through D. District Court's orders dismissing the stay and denying request for rehearing, consolidation of appeals and denying appellants right to amend/correct their documents is set forth in appendix E through G. The bankruptcy court's vacated erroneous order is set forth in Appendix H.

JURISDICTION

Petitioners are not attorneys at law and do not know the law or statutes which invoke jurisdiction of this court. The preparer of this petition, Wilma Dorman is an American Indian of the Cherokee tribe and invokes jurisdiction of this court by Article III of the United States Constitution which reads, "...The utmost good faith shall always be observed towards Indians; their lands and property shall never be taken from them without their consent; and in their property rights, and liberty; they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them."

Petitioners are also invoking the jurisdiction of this court under 28 USC 1651 (a) as petitioners believe that the writ will aid the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers and that adequate relief cannot be obtained in any other form or from any other court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments 1, 4, 5, 6, 7, 8 and 9 to the United States Constitution is set forth in Appendix I.

Articles I, II and III of the United States Constitution is set forth in Appendix J.

Statutes of fraud 60 (b)
FRCP 9 (b), 60 (b) (1) (2) (3) (4) (5) (6), made applicable by Bankruptcy Rule 9024, and FREv. 103 (2) and 401.

STATEMENT OF THE CASE

John C. Dorman dba Dorman Farms and wife, Wilma L. Dorman, under the misrepresentation of their former attorney, filed a Chapter 11 Bankruptcy case for relief to reorganize their family farm and to work out a good faith plan to pay their creditors. An order for relief was entered the following Tuesday, due to Monday being a legal holiday.

John C. Dorman and Wilma Dorman, a new business venture, leased certain nonresidential real property from Jones and Westbrook. This lease did not belong to John Dorman, individual and his wife, Wilma or John C. Dorman dba Dorman Farms. This was a new lease separate and apart from any other farm that John leased or that he owned. This lease made Wilma Dorman a farmer - a person entitled to crops, deficiency payments from the ASCS office, eligible for loans etc as well as under the number of the new business venture at the ASCS office. On all leases made before this one, John was the lessee. Wilma's name was on this one - not because she was John's wife, but because they had formed a new business venture and Wilma used her stocks and certificates of deposits for her share of expenses. And this new business venture did not file bankruptcy. Therefore, petitioners contend that the lease should never have been surrendered to lessors; that if the lease was to be surrendered; it should have been surrendered to the new business venture. And the new business venture would have used the income from the lease to help John Dorman dba Dorman Farms to reorganize the family farm so he could pay his creditors.

John C. Dorman and Wilma Dorman were also directors in a closed Oklahoma Corporation, Lonetree, Inc., which was formed in September, 1991, which held 3,000 shares of stock, with John and Wilma each owning 250 shares, each. Some stock belonged to the sons, while other shares were to be earned by employees working for the corporation. Within this corporation was Dorman Crop Insurance which wrote federal crop insurance for farmers. The corporation was in the process of leasing rental property in New Mexico which the trustee's attorney searched, seized and sold, without notice or a court hearing or without filing an adversary proceeding to determine if the corporation was an "alter ego". It was not an "alter ego" corporation. Overreaching of the trustee's authority and violation of everyone's constitutional rights under the 5th, including the corporation, Lonetree, Inc.; as a corporation is an individual with its own rights. (The trustee's attorney charged the estate for his airplane fare, his meals and motel rooms and charged attorney fees when he was supposedly doing the work of the trustee - he was really on vacation and charged it to the estate. The charges which the trustee had to finish paying as administrative fees was his attorney's trip, attorney's fees and for excessive brokerage fees to sell the new New Mexico property and the exempt items of the debtors and the personal property of debtors' two sons.

In the process of reorganization, the debtors in possession, while in the course of operating the farm and continuing to do business mortgaged to Lonetree, Inc., all the unencumbered minerals in exchange for a loan of $20,000.00, which the corporation could borrow, but the debtors could not. (Proper documents were prepared by Lonetree, Inc. and the Debtors.)

No one would loan the debtors over $3,600 for their minerals and debtors had to have operating funds, plus Charles Underwood, bankruptcy attorney of the law firm of UBK had to have a $15,000.00 retainer before proceeding with debtors' bankruptcy. This was the only way that debtors found to come up with any funds. The trustee did not honor the loan with Lonetree, Inc. and ignored the mortgage and sold all the minerals, and sold the property in New Mexico when venue or jurisdiction was not proper in Oklahoma for property in New Mexico. LONETREE, INC. SHOULD HAVE BEEN DISMISSED BECAUSE IT'S PRINCIPAL ASSET WAS IN NEW MEXICO.

Guarantee Acceptance Corp. v Fidelity Mortg. Investors (1996, CA10 Okla) 544 F2d 449.) ...where sole principal asset was in California, but corporate headquarters and offices were in Oklahoma; hence, venue in Oklahoma was improper; option of retention, dismissal, or transfer is within discretion of judge, which discretion is to be exercised within broad parameters of interest of justice; order of dismissal did not constitute abuse of discretion, given duration of various bankruptcy proceedings in which parties had been involved and debtor's conflicting allegation of record as to its principal place of business.

John was also a fiduciary trustee in his and his sons 320 acres which is referred to as the 1/2 Section, or John's life estate. He and his sons had already begun a partnership and called it Dorman and Sons. John had even spoken to FmHa about the boys borrowing through a partnership and beginning two irrigation circles on the two quarters. John had three grain bins constructed on the land. This land and bins were free and clear of liens. The trustee sold this 320 acres and all minerals as a life estate, without any provision for insurance of the bins, and without any provisions for caring for the premises or the protection of the land. Debtors hope that because John's life estate in the land and minerals were sold that their sons will receive the land and minerals back upon the death of their dad. But, what shape will it be in? Should the trustee and his attorney get by with taking John's power as a fiduciary trustee? When the life estate was a declared trust and John was the declared trustee? And for selling the life estate which dissolved the Dorman and Sons partnership?

None of these entities or persons did not file a bankruptcy petition and should not have been brought into the discovery or consolidated into the liquidation plan. Throughout the proceedings of the bankruptcy court, the debtors are accused of not giving full disclosure. The debtors laid everything on the table for Charles Underwood, expecting him to protect their interests in a professional and legal and lawful way. Once the debtors filed for reorganization; they were at his and the court's mercy - and there was none. If you can't trust your attorney; who can you trust? He sold us out! (The above mentioned entities were consolidated into the liquidation plan without notice or hearing.)

Although Congressman Dole in his legislative review states that family farmers were not to be liquidated and that 11 U.S.C. 365 (d) (4) does not apply to rehabilitation cases; but to large shopping mall - the Dormans were liquidated and Judge Lindsey orders the trustee to surrender the leased land when the Dorman Partnership had it leased and the Dorman Partnership did not file bankruptcy; plus Congressman Dole states that 365 (d) (4) does not apply to rehabilitation cases.

The lower bankruptcy judge Lindsey stated that there was no precedent set in the Tenth Circuit Court of Appeals for 365 (d) (4), so he made his ruling by citing the wrong rule for farmers' necessary for rehabilitation leases; he used the rule for exemptions. The judge or any of the attorneys could find a law in the 10th Circuit Court of Appeals by which to make a ruling; so they used the wrong law, stating that there is no precedent set in the 10th Circuit Court of Appeals on 11 USC 365 (d) (4);

Respondent/lessors received a prohibited ex parte order from Judge Lindsey, shortening their hearing to five days; only two days before the debtors hearing for the confirmation of their reorganization plan. The Judge was not impartial. He was biased and showed favoritism to the lessors' attorney. Else the attorney had the judge over a barrel because the judge did not like admitting that he had neglected to sign an order extending time; and that the court had been proceeding for two months without proper authority? In the February 3, 1993 transcript, Judge Lindsey calls his court an embarrassment and a comedy of errors. Some type of hanky panky went on here!

Contacts and relationships exist between the bankruptcy courts and the bar which are problems that the new law seeks to solve. According to Rule 5001, the system should not only operate fairly but it must appear to operate fairly. And the bankruptcy court for the Western District of Oklahoma does not. In fact, it looks and acts like a bankruptcy ring; a system set up so the attorneys trustees and judges can take all that a farmer has and proceed to sell him out.

There is no relief in bankruptcy! Just ask any of the farmers that sought relief through the bankruptcy courts. Farmers believe that Congress fully intends for the bankruptcy courts to sell them out - that this is another way that the government is "taking" and "distributing" private property. And according to reports from other farmers all across the state and country; the other bankruptcy courts are just as corrupt.

This is why so many farmers are losing their farms and being thrown out in the streets. We don't need more of these good, hard working, producers on welfare or killing themselves. America needs her farmers on their farms producing food to feed the world and to support themselves and to help pay taxes. Like the song says, "Whatcha gonna do when the well runs dry? Honey?"

Judge Lindsey vacated his own clearly erroneous order and within this same order, he ordered the lease surrendered to the landlords. He ruled that 365 (d) (4), by law, stated that farm leases had to be reaffirmed or a request for extension timely filed, within 60 days, else the lease and land had to be surrendered to the landlords.

Two months after the request for the extension is filed, trustee's attorney informs lessors attorney that the extension may be one day late. (Petitioners allege collusion on the part of John Hughey - he wanted lessors' attorney to help liquidate the estate.) Surprise! Surprise! There was never an order filed extending the time? Or did the collusion and conspiracy extend to the bankruptcy records? Numbers in the bankruptcy file have been marked through, changed and petitioners have been hindered from filing documents in the bankruptcy court. And Judge Lindsey signs another Order on February 8, 1993 which extends the time to zero days until February 8, 1993.

Other odd coincidences are: Debtors Discovery is approved on February 3 and the hearing for confirmation of their Reorganization Plan is scheduled for February 27, 1993; Judge's order appointing Jack Cornelius as trustee February 4, 1993 and lessors' attorney is granted ex parte orders on February 16, 1993. Judge Lindsey then proceeds to vacate his zero day order, and orders the surrender of the farm lease. And very conveniently this was all done only after the trustee is appointed?????????? There is also the lost order, or an order was never signed by the judge. Clearly grossly erroneous to say the least.

Petitioners contend that the respondent's arguments are invalid due to the fact that John Dorman dba Dorman Farms did not lease the subject lease from Pauline Jones and Ann Ell Westbrook. John C. Dorman and Wilma L. Dorman, a new business venture, leased the subject farm. The lessors entered into lease agreements with other tenants when the lease belonged to the new business venture; not to the trustee or the bankruptcy estate.

If Judge Lindsey's interpretation of 365 (d) (4) is correct; then, by law, all executory contracts and leases - not just this one lease should have been deemed rejected and the estate or the newly appointed trustee should not have been allowed to overreach his authority and claim the property from these untimely reaffirmed contracts and leases. The Dormans as debtors and under their powers as directors and fiduciary trustees of nondebtor contracts did verbally reaffirm all their contracts and continued to make payments as the contracts and leases required. Yet, the trustee, even after six months, continued to "take" assets from the Dormans.

Petitioners have filed their grievance with the Tenth Circuit court of appeals, seeking a writ of error and supervisory control of the lower bankruptcy court. The Tenth Circuit Court did not afford petitioners relief. Therefore, petitioners are demanding the highest court in the land to see that justice is done. Petitioners are requesting the Supreme Court to review petitioners' bankruptcy case No. 92-16654-L, and vacate, reverse and restore their property - their family farm.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons: This Petition presents issues unresolved by this Court. And the lower bankruptcy court has departed from the accepted and usual course of judicial proceedings, and the Federal District Court and Tenth Court of appeal have sanctioned such a departure, as to call for an exercise of this Court's power of supervision.

365 (d) (4), Legislative History by Congressman Mr. Robert Dole

This subtitle contains three major substantive provision which are intended to remedy serious problems caused by shopping centers and their solvent tenants by the administration of the bankruptcy code. The first problem which this bill would remedy is the long-term vacancy or partial operation of space by a bankrupt tenant.

Subsection (d) places time limits on assumption and rejection. In a liquidation case, the trustee must assume within 60 days (or within an additional 60 days, if the court, for cause, extends the time). If not, the contract or lease is deemed rejected. In a rehabilitation case, the time limit is not fixed in the bill. However, if the other party to the contract or lease requests the court to fix a time, the court may specify a time within which the trustee (or debtor in possession) must act. This provision will prevent parties in contractual or lease relationships with the debtor from being left in doubt concerning their status vis-a vis the estate. (H. Rept. No. 95-505 to accompany H.R. 8200, 95th Cong., 1st sess. (1977) pp. 347-350)

The following footnote of In Re Bonton Restaurant and Pastry Shop, Inc., at 52 B.R. 850, reads:
"Assumption of a valuable lease is as much in the interest of creditors as it is in the interest of the debtor. The court notes that a deemed rejection may be a product of collusion, or the debtor in possessions' malfeasance, negligence, or mistake, which may improperly penalize creditors for the debtor's failure to act. It would appear therefore, that the circumstances surrounding the deemed rejection that is contested by a party in interest be taken into account by the court."

On April 13, 1993, the debtors' law firm filed an "Application for Leave to Withdraw as Attorneys of Record", and cites one of the reasons for withdrawal "the potential claim of the bankruptcy estate against applicants." The attorneys alleged that the trustee should have had a claim against them. It is documented in later pleadings that the attorney for the debtors had allowed the time limit for rejecting or assuming the farm leases to lapse and that the court had therefore rejected the leases, causing the court to determine the debtors as bankrupt, without notice and Judge Lindsey denied the debtors an evidentiary hearing.

Drew Kershen, professor of law at Oklahoma University, agrees with the following quoted opinion. "I believe the plan of liquidation was submitted by the Trustee as a form of punishment of the Dormans for the fraud and dishonesty they "allegedly" had committed early in the case. In his disclosure statement, the Trustee states that the Debtors had committed fraud that they had mismanaged their estate and had been dishonest in their dealings with their creditors. The tone of the Disclosure Statement seems to indicate that something should happen to the Dormans for engaging in this behavior."

Drew Kershen, professor of law continues, "I also think that is how the court responded and felt..." He continues with his professional legal opinion, "... what you say shows what happens when bankruptcy debtors make everyone else involved in the bankruptcy bitter and angry. The Dormans made enemies of potential allies and paid dearly for doing so."

If punishment of the Debtors for the alleged fraud and dishonesty is what was needed, the law provides for such. Under 11 U.S.C. 1106 (a)(3) and 18 U.S.C. 3057, the Trustee is charged with the duty of investigating the debtors, and reporting all violations he finds. There is no investigatory report in the Dorman file.

The fees of everyone involved had gotten out of hand. A later filing by the trustee shows a charge of $22.50 for "taking deposit to bank", when on previous occasions the bank deposit had been mailed, at a charge of $.29. See "Application of Trustee for Interim Compensation" filed January 6, 1994. Additionally, the accountant employed by the Trustee shows $35.00 per hour for her secretary, billed as a "paraprofessional"; and an item billed as "prepared standardized forms for use each month" by G. Wayne Gurrey, Manager, at $50.00 per hour. (The Trustee's office already had a monthly report form available for debtors.) Yet all of these charges were paid in full.

"I take this as further evidence that this is what happens when you make an enemy of the Trustee. If the Trustee had been a "friend" of the Dormans, the Trustee may well have scrutinized these bills much more carefully", concludes the Oklahoma University law professor, Drew Kershen.

The trustee's liquidation plan and final Report reveals the violation of debtors Constitutional rights under Article II which states that all fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty of property, but by the judgment of his peers, or the law of the land... And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

What constitutes cruel and unusual punishment has not been defined by the Constitution. Debtors contend that the most cruel and unusual punishment which can be inflicted upon man, most especially a family farmer, is to "take" his land from him, his rightful God given inheritance. Deprive him of his livelihood, his hard earned property, waste the assets and proceeds of the estate. Sell and distribute his farm ground, grass lands, minerals, to his competitors even though debtor-in-possession filed a good faith petition to reorganize. Lie to him, cheat him, trick him because you are in a fiduciary position - by law, by ethics, he should be able to trust and rely on what he is told. Cause him stress, fear, anguish, anger, confusion, despair - make him dysfunctional. Put him on the chopping block, cut his head off and them make him pay, pay and pay some more.

Truck his cattle to a feed lot in another county and sell them, without attorney objecting; in fact attorney warns debtors that trustee will get his own cowboys and jostle the cattle if they don't round them up. Lie to him that they will be back in a couple of months. Then obtain an emergency ex parte order to sell the cattle on the very day that they are being sold; family pets and all. Road the machinery and equipment, with combines and trucks across the state line into Texas, two days before wheat harvest and hire custom cutters to harvest the wheat. Sell everything you can get your hands on. If you can't sell it - give it away, trade it or keep it. The trustee's attorney said, "We might get away with it."

Be sure and give the controlling, adverse creditor every thing it demands, including excessive attorneys' fees. And overlook the protection of debtors against harassment and frustration of his rehabilitation by prejudicial dismembership and disposition of the estate and his assets because necessary motions requesting court ordered injunctive relief went unheeded and ignored.

Inflict cruel and unusual punishment and sanction them by excessive fines in the form of excessive administrative fees above $235,000.00, excessive attorney fees, by causing them to be in default thereby losing long term (seven year) farm and grass leases. Sell and distributing all owned farm and grass lands, minerals, cattle, personal and household items as well as property of children and grandchildren. Sell keepsakes, grandma's rocker and homemade quilts, grandpa's homemade cedar chest and inherited family china; which the family used for Christmas and

Thanksgiving dinners, Christmas presents and other personal items and property of nondebtor grown sons and grandchildren.

All creditors were paid in full; plus their attorneys were paid from the estate and the controlling creditor received $100,000.00 over the $446,000.00 claim, plus offset two $50,000.00 Certificates of Deposits of $100,000.00, and whatever else the trustee let them keep.

If all the above was done to punish the Dormans by making them "pay dearly" as Mr. Kershen has stated; wouldn't this violate the debtors/Dormans rights by the tormenting punishment of excessive fees? And wouldn't the punishment of liquidating a farmer/rancher's farm and ranch be the most cruel and unusual punishment that a farmer/rancher could be subjected to? That a farm family could be subjected to? A farm wife? Sons that have sacrificed for the farm and ranch due to promises of partnerships and being heirs to the family farm and ranch? Grandchildren?

Judge Covey's ruling of petitioners' objection to the excessive, duplicative, unnecessary and illegal splitting of attorneys' fees was that he did not have the time - that it would take a certified accountant to scrutinize the attorneys motions for compensation. Thus all of the debtors objections of legitimate questions of fact or law went unheeded and was ignored by the bankruptcy judge.

And petitioners have not been afforded any relief in either the District or appellant courts.

The officers of the courts have obstructed justice by either not filing documents which were mailed in a timely manner; else the court "lost?" them on purpose or instructed the bankruptcy clerks to mail documents back to debtors, without filing them.

The court separated the debtors from all the other debtors by holding their hearings in a separate courtroom; segregating them all to themselves, threatening to incarcerate them, to have the U. S. Marshall to handcuff Mrs. Dorman because she was trying to represent herself and her husband in a court of law while she was ridiculed, mocked, laughed at and intimidated. At one time, she was the only one at her table and including the trustee there were seventeen attorneys present, plus she brought her son with her to stay in the back of the courtroom so he could make a phone call if she were arrested as the transcript she had received in the mail had threatened her with.

Judges in bankruptcy have one main duty: to prevent injustice. In the bankruptcy court in Oklahoma the judges do not prevent injustice, for there is far too much injustice going on and too many people are being sucked up (suckered in) by that huge black leech worm/serpent called the bankruptcy court. Plus the judges trust the Trustee far too much - he's like a little god, or as one attorney described him, "A fly in the ointment." Maybe they are all flies; flies corrupt.

Daniel J. Cowan, a noted bankruptcy authority writes: ...In general, a bankruptcy court is more inclined to listen to the trustee than to the debtor. A trustee with a power to sell can render any plan that the debtor might like to propose impossible or highly improbable. If a debtor intends to rehabilitate a manufacturing business, a sale by the trustee of key machinery puts the rehabilitation out of the power of the debtor to proceed. If the debtor has a plan ready to file, a protest could be made to the court against the sale, but often the proposed sale will occur so early that the debtor will not be able to fomulate a plan. Not all trustees are above such actions as will render it impossible for the debtor to formulate a plan and thus leave it for the trustee to formulate a plan or to serve as trustee in the event of a conversion to Chapter 7. (Cowans Bankruptcy Law and Practice, Sixth Edition, St. Paul: West Publishing Company, 1994, Vol. 1 Page 182.

This is what happened with the ex parte order granting the trustee to sell the debtors' cow herd before trustee's plan of liquidation was confirmed. Plus in his order allowing the ex parte sale of the cattle, Judge Lindsey writes "a trustee has already been appointed, indicating a strong uncertainty in the Debtors' ability to reorganize." There is not any necessary relationship between a trustee being appointed and the ability of the estate to carry out the provision of a reorganization plan. But this sentiment would be echoed by a Federal Court Judge in one of the adversary proceedings. (Judge Thompson) The Judges seem to believe that any time a debtor-in-possession is replaced by a Trustee there are too may difficulties in the case to permit reorganization. OR IT SEEMS TO MEAN THAT WHEN A TRUSTEE IS APPOINTED A SALE IS ASSURED!

It should be noted that in all motions filed by the trustee; he also submitted an order for the judge to sign. The judges do not write their own orders; therefore an adverse party can include whatever he wants to in an order which is signed by a judge. (If this is not improper; fraud on the court, abuse of power - illegal; what is?)

The Judge should have used his power under 105 when debtors' discovery statement had been approved and all objections had been resolved and the Reorganization Confirmation hearing was ONLY TWO DAYS AWAY. Rather than prevent injustice, Judge Lindsey showed his bias against the debtors and his favoritism to the lessors by granting them ex parte orders, shortening the time for their hearing, allowing them to violate debtors automatic stay and shortening the time to object to 5 days; then granting their hearing two days before debtors' hearing on their confirmation plan. At the hearing, he orders the surrender of debtors' long term lease contract. At the same hearing, the court, the trustee and all the attorneys agree that without the farm lease the debtors could not cash flow and should be liquidated. All of this was done without a notice or a hearing. It is all in the transcripts which are attached as evidence to the briefs in the 10th Circuit appellant court.

Family farmers are excluded from being transferred to a Chapter 7 which is the chapter for liquidation. Since Congress did not intend for family farmers to be liquidated without their consent; they should not be allowed to be liquidated in a Chapter 11 Reorganization without their consent. And a trustee should not be allowed to liquidate them simply by calling his liquidation plan a Reorganization Liquidation Plan. This is why everyone involved wanted a trustee appointed. He can promise everyone payment in full, excessive attorney fees and use the law and the courts for illegal gain.

It is of considerable importance that in a liquidation, the fees paid to the trustee are a percentage of the entire estate, rather than just a percentage of those funds which pass through the trustee's hands during the pendency of the plan in a reorganization. The trustee therefore stands to make a far greater fee in a liquidation than a reorganization. And Jack Cornelius proposed a plan of liquidation rather than a plan of reorganization.

The stronger duties of a U. S. Trustee under 1109 of the Code says that any party in interest may raise and be heard on any issue in the case; the stronger duties of the U. S. Trustee should be to closely scrutinize any plan of liquidation filed by a trustee, because of the possibility of overreaching (as a knee-jerk reaction to claims of fraud or mismanagement) and/or greed on the part of the trustee. The same trustee, Jack Cornelius has sold out many other farmers and has proposed a plan of liquidation in another, larger farmer bankruptcy just this past autumn. Again Cornelius stands to earn far greater trustee's fees from the liquidation than he would have from a planned payout.

Petitioners believe that greed and illegal gain was the underlying motive and the false allegations, intimidation, threats of incarceration, threats of economic loss, fraudulent use of the law and the court - even extortion was used against the debtors to "control" them as the trustee's attorney assured the lessors' and bank's attorneys.

Although Debtors paid their former attorneys over $25,000.00, they have been without representation and have been unable to find an attorney that can or will represent them. Therefore, debtors had to begin representing themselves when they did not know the first thing about filing an objection or motion or even where to go to begin. They began investigating their case, did not roll over and play dead - and they have been defending themselves in the lower courts. The court records and transcripts have caused them to come to the conclusion that there was collusion, conspiracy, chain conspiracy and civil conspiracy committed in their case.

A lack of good faith on the part of the trustee in proposing a plan of liquidation is shown by the fact that the Trustee's plan proposes to pay all of the creditors of the Dormans in full, and that is exactly what happened. The liquidation certainly lined the pockets of the Trustee, several attorneys, and other vendors they used.

Many commentators seem to believe that trustee and attorney fees are the single most important reasons that the outcome of many Chapter 11 cases is liquidation rather than reorganization. See, Fenning, Hon. Lisa Hill, "The Future of Chapter 11: One View From the Bench," In Annual Survey of Bankruptcy Law, 1993-1994 Edition, William L. Norton, Jr., edl, New York: Clark Boardman Callaghan, 1994, Page 113; Hon. Edith H. Jones "Chapter 11: A Death Penalty For Debtor And Creditor Interests," 77 Cornell L. Rev. 1088 (1992); Brenda Hacker Osborne, "Attorneys' Fees in Chapter 11

Reorganizations: A Case For Modified Procedures," 69 Indiana L. J. 581 (1994).

Chapter 11: A Death Penalty For Debtors? UBK's associate D. Benham Kirk, Jr. scared, confounded, and confused the Dormans as debtors in possession after filing their petition for relief by stating, "You're Dead!"

The Trustee's Report states that $235,218.76 in administrative claims were paid; $126,565.71 of this was attorney and accountant fees, the balance trustee's fees; but the actual attorney fees paid in the case is much higher. The total paid to Cliff Gooding, attorney for Case Credit, to Mike Bickford, attorney for FNBH, and to Steven Elliott, attorney for the Lessors, came out of the proceeds of the sale of their assets and are not reflected in the Trustee's Final Report. (Excessive fines and cruel and unusual punishment which is prohibited under Article II of the Constitution.)

Also the entire bankruptcy court for the Western District of Oklahoma was well aware that UBK as a law firm was shaky and that one of their principal partners was having a drug problem. Judge TeSelle knew of the alcohol problem and if the court had such knowledge, the judge owed a duty to the Debtors to provide them with some measure of protection from their own counsel.

Even without prior knowledge by the court, the law firm's poor handling of the case and it's own admission that a possible claim of malpractice against UBK had arisen less than 5 months into the case, should have made both judges pause, at least as to whether or not the debtors' attorneys would be allowed a fee.

UBK did not engage in any pre-bankruptcy planning with the Dormans. Underwood also assured the Dormans that he would reaffirm their farm leases and under an Chapter 11 there would be no trustee and that if there was any danger of losing the farm leases that he would transfer them to a Chapter 12.

UBK lost the farm leases with the help of the trustee's attorney and the lessors' attorney and filed an agreed to order with the bank to appoint Jack Cornelius as a trustee under duress, intimidation and the trickry and lie that "Jack" had promised not to sell the Dormans out and would only be the trustee for two months and that he would help to get their reorganization plan confirmed.

And Underwood never transferred the Dormans to a Chapter 12, although he stated to Jack Cornelius that if they were going to transfer the Dormans to a Chapter 12, they needed to do so right away. They didn't; and Jack Cornelius breached his contract and filed a liquidation plan and allowed Underwood's attorney fees and Hughey did not file a malpractice suit against UBK. (Judges should have controlled all excessive attorney fees.)

Judge Covey temporarily enjoined the Dormans from filing any further pleadings in any of their on-going cases, unless represented by a licensed attorney. One week later, he made the injunction permanent. This violates the Constitution of the United States under the Due Process Clause. Neither does 105 of the bankruptcy Code provide a bankruptcy judge with such power; under that section a judge is only to "carry out the provisions of this title."

His allowing the creditors and attorneys to file pleadings and argue their excessive attorney fee cases, while preventing the debtors from doing the same is patently unjust. The few pleading the Dormans did file were scrutinized by him prior to filing and this situation caused much delay and frustration to the Dormans, abrogating their right to access to the court.

The Dormans had valid objections to attorney fees and significant questions of fact or law; yet their arguments were ignored and went unheeded. (Judge Covey even allowed the trustee's attorney to try to get the Dormans to reimburse the bankruptcy estate for what should have been exempt property - property in which there were no creditors or liens. And property which not only belonged to them, but property which belonged to their sons. This property was sold to pay trustee's attorneys their final fees.)

Judge Covey's actions regarding the injunction against the Dormans, which allowed them to file only such pleadings in the case as he deemed, "correct", was clear abuse of discretion and violation of the United States Constitution. It also showed judicial bias as he ignored the pleadings which he allowed the Dormans to file, even when they presented significant questions of fact or law to the court.

The fact that the trustee got the "emergency" sale of the cattle ordered prior to confirmation of any plan crippled the ability of the debtors to fund any plan. The fact that every attorney got paid every penny he or she asked for, even when such charges clearly were not warranted and did not benefit the estate, the propriety of paying attorney fees to those who commit malpractice.

All the lack of good faith by everyone involved in the case, contributed to the downfall of the Dormans and the loss of their farm.

Was justice done in the Dorman case? NO! First the entire point of bankruptcy under Chapters 11, 12 and 13 is reorganization, not liquidation. In Re Lake Ridge Associates 163 B.R. 284 (E.D. Vir. 1994) the judge has aptly stated

"...great caution should be exercised by a court in deciding there is no hope."

Second, in a case such as this where no creditors' committee exists, and there is only one major creditor, that creditor should not be allowed to control the course of the proceedings. And the major creditor should not be allowed to continually violate the debtor' automatic stay. FNB, Hooker, also violated the debtors' automatic stay by piercing the corporate veil of Lonetree, Inc.

This court should grant certiorari here to explicitly rule that 11 USC 365 (d) (4) either excludes or includes rehabilitation cases in bankruptcy. Whether it pertains to large shopping malls and its many and varied leases and excludes the family farmer who has filed a Chapter 11 or 12 to get a plan confirmed.

Judge Lindsey in bankruptcy court used a case cite on exemptions, stating there was no precedent pertaining to 11 USC 365 (d) (4) in the 10th Circuit Court of Appeals.

There are too many businesses that believe they have reaffirmed their leases or contracts with their landlords when their attorneys have neglected to reaffirm in the court within the 60 day time limit.

And there are conflicts in the circuit courts where in the 90's there are too many courts deeming debtors in default where in the 70's and 80's under Rule 11-53 or 11 USCS 757(2) unless there was an affirmative rejection the contract remained in effect; else court must give permission for rejection of executory contract.

The Court must ascertain whether improper practices such as trafficking of votes were used to influence change with lessors as well as with other large creditors when creditors had either voted to confirm debtors plan, else they were in default. Debtors contend that creditors had either agreed with debtors reorganization plan else knew that the trustee was going to file a liquidation plan and pay them all in full; which is what he did.

A farmer should not lose a long term farm lease simply because he files a petition in bankruptcy for relief so he can continue to farm and pay his creditors. A farmer should not be in default on his farm lease due to his attorney's negligent acts or misconduct. A farmer should not be punished for the error of attorneys, judges, bankruptcy courts or trustees. A farmer should not lose his lease when he pays a cash lease for a portion of it and when he has verbally assured his landlord that he has filed a petition for relief so he can continue to farm the leased land.

The Supreme Court should rule on whether the bankruptcy courts and all involved has the power and/or authority to punish debtors by "taking" their property. It should also rule on whether petitioners have been fined excessive punishment fines and have been unjustly inflicted by cruel and unusual punishment according to Article II and the Eighth Amendment to the Constitution.

The Supreme Court should determine if petitioners were denied due process of law and whether judge Covey abused his discretion and committed miscarriage of justice and whether debtors and their property, their estate, sons' property and Lonetree, Inc.'s have been held in bondage by the restraining orders and the permanent injunction.

Upon review of the petitioners record in the lower bankruptcy court, the Supreme Court should rule as to whether clearly erroneous orders and proceedings in the lower courts can deny petitioners due process and deny them relief of their grievances and deny them justice by declaring their appeal as being moot because their property has been sold by illegal and corrupt actions of their enemies in the bankruptcy court. And failure to reverse judgment and vacate subsequent orders would result in miscarriage of justice.

The fraudulent abuse and corruption of the judicial system, the laws, and the courts is prohibited and The Supreme Court should demand a full blown evidentiary hearing and clean up all this corruption, and illegal use/abuse of the law to confiscate property and the illegal use of funds for trafficking, kickbacks, bribery and extortion.

Bankruptcy, especially, Chapter 11 Reorganization is a most profitable way to confiscate - "take" property, lands, cash collateral for personal gain, without anyone to answer to - the cover up is easy and in Oklahoma, farmers are having to learn to represent themselves because they cannot find an attorney that has the backbone to buck the corrupt system. They all want on the gravy train. Who or what attorney or trustee wouldn't be tempted? These excessive administrative, trustee and attorney fees are high stakes!

Once again, Oklahoma has the reputation of having the most corrupt justice and judicial system in the nation. And our judges and attorneys are doing it to themselves. They are being told by all the pro se filings and no one is listening. Farmers are independent, they do their own work, their own repairs, etc; and up till now, they have left the lawyering up to the lawyers. You can't find an attorney that will represent you - they hold their hand out for a huge retainer, then don't do anything to earn it. Because they are unethical, dishonest, deceitful, and tricky; they think you are. And farmers don't trust judges because they are attorneys and they do not trust the bar association because they are attorneys. They are all "lawyers helping lawyers".

If there are any just judges and attorneys; they sure aren't protecting the reputation of their profession; a little leaven or one bad apple corrupts the whole barrel or judicial system. They are being allowed to use the courts, the judicial system and the law to transfer the wealth of the rural people to corrupt individuals and are covering up their acts with false accusations, unauthorized agreed to orders, feigned objections and improper court proceedings.

After all; WHO CARES? IS THERE ONE JUST JUDGE? GOD IS LOOKING FOR SOMEONE WHO CARES! A MOUNTAIN MOVER!

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgments and opinions of the Court of Appeal, the U. S. District Court for The Western District of Oklahoma and the clearly erroneous orders of the U. S. Bankruptcy Court For The Western District of Oklahoma.

DATED: July 27, 1995.
SUBMITTED IN BOOKLET FORM August 21, 1995

Respectfully submitted in Jesus Christ's name.

John C. Dorman
Wilma L. Dorman

John C. Dorman
Wilma L. Dorman
Route 1, Box 89
Forgan, Oklahoma 73938
405-259-6488

Petitioners are representing themselves.

APPENDICURES

DEBTORS NOTE PERTAINING TO ORDERS

Debtors had only begun representing themselves on May 11, 1993, and did not know of the compromise until much later and were not serviced; plus the trustee bought the lessors' vote on the liquidation plan by the judge signing a prejudgment order which granted property to first the trustee; then to the lessors, which was in dispute in a scheduled adversary suit.

The Order which properly mandated that the property in dispute belonged to the trustee and not to the Dormans was not signed or filed until the later part of June; even then, Judge Covey signed the Summary Judgment Order without a hearing and did not realize that he had signed a summary judgment order. In fact, he signed 14 Orders in one day and placed a temporary injunction on debtors and five days later made it permenant.

All these Orders were appealed and requested the District Court to consolidate all of the Dorman appeals and the Dormans various documents and briefs in the District court TO SAVE TIME AND FINANCES. (Most especially since all of the Dorman appeals were being directed to one specific judge in the District Court - to Judge Thompson.)

The Dormans also requested an extension of time and the right to amend/correct

G

their appeals and briefs and a rehearing - their requests were denied. This denial Order was appealed to the 10th Circuit and a request was made to the 10th to consolidate all of the Dorman appeals.

Therefore, the Dormans have filed their motions, briefs and briefs in support as though all their appeals were consolidated and amended. This is why the Dormans have listed all their grievances of the lower courts in the briefs in the 10th Circuit and now to the Supreme Court of the United States.

The appellant court made a request as to whether the orders were final or not - the debtors did not know therefore they requested the BK court to let them know if an order was final. Judge Lindsey became offended. See his letter to Judge Thompson when he recused himself; after he told the Dormans that he might have made a mistake.

The Dormans should have had the perfect right to amend their appeals and briefs, most especially since the only thing about the law that they knew was to appeal and they had to learn how to do this and they were having to file objections, documents in three seperate courts from the trustee's two attorneys, the bank's attorney and the lessors' attorney; while under a permenant injunction and hostility from all three courts.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

In Re: John C. Dorman and) No. 94-6261
Wilma L. Dorman Debtors) D. C. NO.
Debtors) 93-936-T
) (W. D. Okla)
John C. Dorman and)
Wilma L. Dorman)
Appellants)
v.)
Pauline Jones and)
Ann Ell Westbrook)
Appellees)

ORDER AND JUDGMENT*

Before TACHA, LOGAN, AND KELLY, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34 (a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's

A.

General Order filed November 29, 1993.
151 F.R.D. 470.

This appeal is from an order of the district court dismissing appellants appeal from an order of the United States Bankruptcy Court for the Western District of Oklahoma. The District Court held that the appeal was rendered moot because appellees Jones and Westbrook entered into a settlement agreement with the appellants' court-appointed trustee in bankruptcy. Appellees have also entered into an agreement to lease the subject real property. The district court held that these agreements resolved all the issues underlying the parties' respective positions concerning the surrender order. On this appeal, appellants cite a multitude of grievances related to the bankruptcy proceedings involving their property. None of these grievances, however, can be determined by this court. We agree with the district court that this controversy is moot and the appeal is dismissed for substantially the reasons given by the district court.

The mandate shall issue forthwith.

Entered for the Court
Deanell Reece Tacha
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In Re: John C. Dorman) No. 94-6261
Wilma L. Dorman) (D. C. CIV -
Debtors) 93-936-T)
)
John C. Dorman and)
Wilma L. Dorman)
Appellants)
v.)
)
Pauline Jones and)
Ann Ell Westbrook)
Appellees)

ORDER

Entered May 2, 1995

Before TACHA, BARRETT, and KELLY, Circuit Judges.

This matter comes on for consideration of appellants' petition for rehearing filed in the captioned case.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

Entered for the Court

Patrick Fisher, Clerk
By Opal A. Carter
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In Re: John C. Dorman) No. 94-6261
Wilma L. Dorman) (D.C. CIV-
Debtors) 93-936-T
)
John C. Dorman and)
Wilma L. Dorman)
Appellants)
v.)
Pauline Jones and)
Ann Ell Westbrook)
Appellees)

ORDER
Filed May 4, 1995

Before TACHA, LOGAN, and KELLY, Cirucit Judges.

The court, in order to correct a clerical error in the issuance of this order on May 2, 1995, thereby reissues it in order to reflect the proper panel of Tacha, Logan and Kelly instead of Tacha, Barrett, and Kelly.

The order reissued nunc pro tunc and is to read as follows:

This matter comes on for consideration of appellants' petition for rehearing filed in the captioned case.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

Entered for the Court

Patrick Fisher, Clerk
By Opal A. Carter
Deputy Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

John C. Dorman and) No. 94-6261,et al
Wilma L. Dorman) (D.C. No. 93-936-T
debtors) W. D. OKLA.)
)
John C. Dorman) Demand For
Wilma L. Dorman) Rehearing
Appellants)
v.)
Pauline Jones)
Ann Ell Westbrook)
Appellees)

DEMAND FOR REHEARING

COMES NOW, John C. Dorman and Wilma L. Dorman, demanding a rehearing on the dismissal Order and Judgment filed of record on March 31, 1995: and a rehearing on all the other orders which the 10th Circuit has dismissed without due process of appellants' constitutional rights or their constitutional right of oral argument or appellants' demand for relief/redress of their grievances which constitutes an unconstitutional "taking" of their farm land, property and the unconstitutional infringement and "taking" and the "agreement" and the illegal subleasing of the nondebtor nonbankruptcy partnership/constructive trust lease contract and the breach of contract by Jones and Westbrook. And the "Clearly Erroneous" proceedings of the bankruptcy court and the abuse of discretion of the bankruptcy judges and the abuse of discretion and the unauthorized "taking" and unauthorized power of the alleged court appointed trustee.

Appellants request an extension of time to research and prepare brief.

Respectfully submitted in the honorable, highly exalted Name of the Most High God, The Lord of Host, Jesus of Nazareth, the Christ and only begotten Son of God - the Judge of all the living and the dead.

John C. Dorman
Wilma L. Dorman

Dated 4-7-95

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

In Re: John C. Dorman	)	No. 92-16554-
Wilma L. Dorman	)	LN
Debtors	)	
	)	Chapter 11

ORDER

Before the court are three (3) motions filed by the debtor: (1) Motion for Leave to Appeal, (2) Motion for extension of Time to File Notice of Appeal, and (3) Motion to Stay Effectiveness of Order Pending Appeal. These matters have been referred to the district court for determination pursuant to Fed. R. Bankr. Pro 8003(b).*

Fed R. Bankr. Pro. 8003(b) provides, upon motion for leave to appeal:
(b) Transmittal; determination of motion. The Clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers of the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

The first motion addressed is that for leave to appeal. There appears in the record to be no dispute among the parties that the order of the bankruptcy judge, sought to be appealed, is a final one. See Answer to Motion for Leave to Appeal, p. 1. The court agrees. See In re Magic Circle energy Corporation, 889 F 2d 950, 953 (10th Cir. 1989) (The order "must end the litigation and leave nothing to be done except execute the judgment.") This dispute within the bankruptcy case is, by virtue of the order in question, final. The bankruptcy case need not be concluded in order for an appeal of the bankruptcy court's disposition to be lodged. See Eddleman v. U. S. Dept. of Labor, 923 F2d 782, 786-787 n. 7 (10th Cir. 1991) (We are flexible in allowing appeals of discrete disputes within a bankruptcy case. We demand, however, that each discrete dispute come... in a posture which satisfies 'traditional' finality principles.")

With this in mind, the court finds debtors' Motion for Leave to Appeal MOOT, since a Notice of Appeal was filed March 5, 1993. That is to say, leave to appeal the final order is as of right. 28 U.S.C. 158(a). Fed. R. Bankr. Pro. 8001(a). For the same reasons, debtors' Motion for Extension of Time to File Notice of Appeal is also MOOT.

This leaves for resolution debtors' Motion to Stay Effectiveness of Order Pending Appeal.

To prevail on its motion, (movant) must establish four factors: (1) that it is likely to succeed on the merits: (2) that is will suffer irreparable injury without a stay; and (4) that the issuance of a stay is not contrary to the public interest. See in re Porter, 54 B. R. 81, 82 (Bankr. N. D. Okla. 1985); In re Candor Diamond Corp., 26 B. R. 844, 847 (Bankr. S. D.N.Y. 1983).

In re Crabtree, 113 B.R. 723 (W.D. Okla. 1990).

The debtors here have not met their burden in at lease two respects. First, irreparable injury is not evident, since at the time the surrender order was entered, a trustee had already been appointed indicating strong uncertainty in the debtors' ability to reorganize. Second, granting the stay would result in harm to the trustees and creditors of the estate. A stay would result in the trustees' inability to oversee realization of the value of the lease premises to the benefit of the creditors. This is particularly so, when the debtors are not otherwise "in possession" of the estate. Moreover, such uncertainty in the status of the trustee's lease relationship with the debtors would not appear consistent with Congress's intent expressed in 11 U.S.C. 365 (d) to resolve these matters expeditiously. Having failed in these respects, the court need not address the issue of likelihood of success on the merits.

Accordingly, the Motion for Leave to Appeal and the Motion For Extension of Time to File Notice of Appeal are MOOT.

The Motion to Stay Effectiveness of Order Pending Appeal is DENIED.

IT IS SO ORDERED this 17th day of May, 1993.

Judge Thompson
UNITED STATES JUDGE

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

In RE:
John C. Dorman) No. CIV-93-936-T
Wilma L. Dorman) BK-92-16654-LN
) Chapter 11
Debtors)

ORDER

This action seeks to appeal an order of the United States Bankruptcy Court for th Western District of Oklahoma, entered on February 24, 1993. That order directed the debtors, appellants herein, to immediately surrender to appellees, Pauline Jones an Ann Ell Westbrook, certain non-residential real property which appellees had leased from them (the Surrender Order"). Appellees Jones and Westbrook have filed a motion to dismiss this appeal, contending that it has been rendered moot. The appellants have failed to respond to the motion,* and this motion may be deemed confessed pursuant to local Rule 14. In any event, as is more fully set forth herein, the appal is moot and mus t be dismissed.

---

*On October 29, 1993, the appellants filed an application seeking leave of court to extend the time in which to respond. However, that application was denied for failure to comply with the mandatory requirements of Local Rule 14(H).

F

At the time this appeal was field, the appellants also filed a motion asking this court to stay enforcement of the Surrender Order during he pendency of this action. The motion to stay was denied by this court, and appellants appealed that decision to the Tenth Circuit Court of Appeals. That appeal was dismissed for lack of jurisdiction because this court's order denying the stay was not a final appealable order under 28 U.S.C 158(d). In the interim, the appellees Jones and Westbrook entered into a settlement agreement with the appellants' court-appointed trustee in bankruptcy. Appellees Jones and Westbrook also entered into an agreement with a third party to lease the subject real property. The settlement agreement between the trustee in bankruptcy and appellees Jones and Westbrook resolved all issues underlying th parties' respective positions concerning the Surrender Order. This settlement agreement was submitted to and approved by th United States Bankruptcy Court for the Western District of Oklahoma. See Order Granting Motion to Compromise Controversy, entered on May 18, 19993, attached to appellants' brief in support of the motion to dismiss as Exhibit F thereto. Appellants did not appeal the order approving the settlement. The time period for doing so has expired. (See Debtors note on page 34)

This court may exercise jurisdiction only over those matters presenting a case of controversy which requires judicial resolution. See e. G. Wiley V. National Collegiate Athletic Ass'n, 612 F. 2d 473, (10th Cir. 1979), Cert. denied, 446 U. S. 943 (1980). A case is moot "when the issues are no longer live" or "the parties lack a legally cognizable interest in the outcome." Powell V. McCormick, 395 U. S. 486, 496 (1969).

In this case, the bankruptcy court's approval of the settlement and compromise resolves the parties' dispute concerning the Surrender Order. No other issue is before this court. Accordingly, no case or controversy remains for adjudication and the action has been rendered moot. As a result, it must be dismissed.

IT IS SO ORDERED THIS 28th day of June, 1994.

Judge Thompson
United States District Judge

IN THE UNITED BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:
JOHN C. DORMAN and) No. BK-92-16654-LN
WILMA L. DORMAN) Chapter 11
)
Debtors)

ORDER STRIKING CONFIRMATION HEARING AND DATES FOR BALLOTS AND OBJECTION TO CONFIRMATION OF DEBTORS' PROPOSED PLAN OF REORGANIZATION

The court, upon hearing the statements of counsel for the Debtors, the Trustee and First National Bank of Hooker, orders that the confirmation hearing on the Debtors' proposed Second Amended Plan of Reorganization set for Friday, February 26, 1993, and the dates for return of ballots and objection to confirmation, Wednesday, February 24, 1993, shall be stricken, all to be reset ay further order of this court.

dated: February 24, 1993

Paul B. Lindsey
U. S. Bankruptcy Judge

H

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:
JOHN C. DORMAN) NO. BK-92-16654-LN
WILMA L. DORMAN)
Debtors)

ORDER EXTENDING TIME TO ASSUME OR REJECT EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES

Upon application by the Debtors for an extension of time to assume or reject executory contracts and/or unexpired leases, and there having been no objection filed within the time allowed to the granting of the relief requested in the application, pursuant to Fed. R. Bankr.9006, the time for Debtors to assume or reject executory contracts is extended to February 8, 1993.

Dated: February 8, 1993

Filed: February 8, 1993
Approved by:
Mark Troffoli
Asst. U. S. Trustee

Paul B. Lindsey
U. S. BK Judge

GI

(2)

Supreme Court, U.S.
FILED
SEP 21 1995
CLERK

No. 95-307

In The
Supreme Court of the United States

October Term, 1995

John C. Dorman and Wilma L. Dorman,
Petitioners,

versus

Pauline Jones and Ann Ell Westbrook, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT FOR THE TENTH CIRCUIT

BRIEF OF THE RESPONDENTS, PAULINE JONES AND ANN ELL WESTBROOK, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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53 pp
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RESTATEMENT OF THE QUESTION PRESENTED

The only question that would properly come before this Court if *certiorari* were granted is whether the Tenth Circuit erred in affirming a District Court order dismissing a bankruptcy appeal as moot.

Contrary to the petitioners' statement, 28 U.S.C. § 2403(a) is not applicable. *See* the petition, page 16, and the certificate of service filed in connection with it; *see also* Supreme Court Rule 29.(b). None of the questions presented in the petition indicate that the petitioners seek to mount a constitutional challenge on an Act of Congress.

PARTIES TO PROCEEDING BELOW

Although they have erroneously presented questions as if everyone involved in their bankruptcy case is a party to this proceeding, John C. Dorman and Wilma L. Dorman (collectively, the "Dormans") only named Pauline Jones ("Jones"), Ann Ell Westbrook ("Westbrook"), and "John Doe(s) 1-50" as respondents in the style of their Petition for a Writ of *Certiorari*. The certificate of service the Dormans filed with respect to their petition shows that only Jones, Westbrook, and the Solicitor General were served. Presumably, this indicates that the Dormans consider Jones and Westbrook to be the only respondents before this Court. *See* Supreme Court Rules 29.3.

However, a few of the other participants in the Dormans' bankruptcy case may be parties to this proceeding, too, although they are probably unaware of it because they were not served by the Dormans. *See* Supreme Court Rules 12.4. In the notice of appeal they filed to appeal the Bankruptcy Court to the District Court, the Dormans named the following as parties:

> themselves;
>
> Jones and Westbrook;
>
> Jack Cornelius, who was the Chapter 11 trustee appointed in the Dormans' bankruptcy case;
>
> The First National Bank of Hooker, Oklahoma, which was a creditor in the Dormans' bankruptcy case; and
>
> The Office of the United States Trustee.

The document the Dormans filed to appeal the District Court's order to the Tenth Circuit did not identify who the Dormans considered to be the parties. However, the Dormans' Tenth Circuit brief listed only Jones and Westbrook as appellees, although the certificate of service states that the Dormans served their brief on the above named participants, some of the attorneys who had appeared in the Dormans' bankruptcy case, two Bankruptcy Judges (Paul B. Lindsey and Stephen Covey), the Attorney General of the State of Oklahoma, the Attorney General of the United States, and the United States Attorney in the Western District of Oklahoma.

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JURISDICTION

The Dormans have petitioned for *certiorari* review of a March 31, 1995 order entered by the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit's March 31, 1995 order was entered in an appeal through which the Dormans ultimately sought reversal of a Bankruptcy Court order.

The Dormans requested rehearing of the March 31, 1995 order, which the Tenth Circuit denied on May 2, 1995. On May 4, 1995, the Tenth Circuit reissued its May 2, 1995 order, *nunc pro tunc,* to correctly identify the members of the panel that denied the Dormans' request for rehearing.

The Dormans unsuccessfully tried on or about July 31, 1995 to file a petition for a writ of *certiorari.* The Dormans did not succeed in filing their corrected petition until August 23, 1995.

This Court's jurisdiction is based on 28 U.S.C. § 1254(1). Contrary to the Dormans' jurisdictional statement, neither Wilma L. Dorman's alleged status as an American Indian nor 28 U.S.C. § 1651 serves as a basis for this Court to exercise jurisdiction. The quote the Dormans offer as support for the proposition that this Court has jurisdiction over matters involving Indians, which is erroneously identified as a quote from Article III of the United States Constitution, is actually a quote from Article III of the Northwest Ordinance of 1787 and obviously has no relevance here. It is also well established that 28 U.S.C. § 1651 does not expand federal court jurisdiction. *Telecommunications Research and Action Center v. F.C.C.,* 750 F.2d 70, 76 (D.C. Cir. 1984), *quoting* 9 J. Moore, *Moore's Federal Practice,* § 110.26 at page 282 (2d ed. 1983).

The Tenth Circuit's appellate jurisdiction over the appeal from the District Court was based on 28 U.S.C. § 158(d). The District Court's appellate jurisdiction over the appeal from the Bankruptcy Court was based on 28 U.S.C. § 158(a). The Bankruptcy Court's jurisdiction was based on 28 U.S.C. § 1334(a) and (b) and § 157(a) and (b)(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND ORDINANCES INVOLVED IN THE CASE

A. *CONSTITUTIONAL PROVISIONS*

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

B. *STATUTES*

"The trustee in a case under this title is the representative of the estate."

11 U.S.C. § 323(a).

> In a case under chapter 7 of this title, if the trustee does not assume or reject an execu-

> tory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

11 U.S.C. § 365(d)(1).

> In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

11 U.S.C. § 365(d)(2).

> Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4).

> The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a).

> Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

28 U.S.C. § 157(a).

> Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

28 U.S.C. § 157(b)(1).

> The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

28 U.S.C. § 158(a).

> The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

28 U.S.C. § 158(d).

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . .

28 U.S.C. § 1254(1).

> Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

28 U.S.C. § 1334(a).

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b).

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651(a).

> In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and

> shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U.S.C. § 2403(a).

C. *ORDINANCES*

> Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Northwest Ordinance of 1787, Article III.

No. 95-307

In The

Supreme Court of the United States

October Term, 1995

John C. Dorman and Wilma L. Dorman,
Petitioners,

versus

Pauline Jones and Ann Ell Westbrook, et al.,
Respondents.

BRIEF OF THE RESPONDENTS, PAULINE JONES AND ANN ELL WESTBROOK, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COME NOW the respondents, Jones and Westbrook, and submit their brief in opposition to the Dormans' Petition for a Writ of *Certiorari.*[1]

STATEMENT OF THE CASE

A. *NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW*

The only order arguably subject to review by *certiorari* is a Tenth Circuit order affirming an order entered by the United States District Court for the Western District of Oklahoma. The District Court order dismissed as moot the Dormans' appeal from an order entered by the United States Bankruptcy Court for the Western District of Oklahoma.

---

[1] Although denominated as a petition for a writ of *certiorari*, the Dormans refer in their petition to the All Writs Act, 28 U.S.C. § 1651. *See* the Dormans' Petition, page 20. Given that the Dormans are appearing *pro se*, this reference may simply be an error. However, if it is not, Jones and Westbrook submit that the Dormans are not entitled to relief through an extraordinary writ. The Dormans have not satisfied any of the substantive or procedural requirements in connection with obtaining such a writ. 28 U.S.C. § 1651(a); Supreme Court Rule 20.

B. *MATERIAL FACTS*

The Dormans recount what they think happened in their bankruptcy case and offer explanations for why they think it happened. In the process, the Dormans complain about practically everything and blame almost everyone, including their former attorneys, the Chapter 11 trustee appointed in the their bankruptcy case, four Bankruptcy Judges, a District Court Judge, unnamed members of the Bankruptcy Court Clerk's staff, and virtually every lawyer and creditor that actively participated in the *Dorman* bankruptcy case, each of whom allegedly engaged in all sorts of misconduct.

The Dormans' account of the "facts" is almost totally inaccurate, unsubstantiated by the record, and irrelevant to any question that might properly come before this Court if *certiorari* were granted. The accurate, substantiated, and potentially relevant facts are as set forth below.[2]

Several years ago, Jones and Westbrook leased certain nonresidential real property to the Dormans (the "Leased Property"). Dormans' Petition, page 21. A short time later, both of the Dormans filed for bankruptcy relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 *et seq.* Tenth Cir. App., Tab 1, Ex.

---

[2] Unless otherwise indicated, record references are to Jones' and Westbrook's Supplemental Appendix in the Tenth Circuit (hereinafter "Tenth Cir. App., Tab ___, Ex. ___, page ___"). Given that the Dormans are attempting to raise new issues in their petition, certain facts not in the record below may be germane. Those facts are documented in the appendix to this brief (hereinafter "Sup. Ct. App., page ___").

G, page 2, docket entry 1. Under penalty of perjury, the Dormans listed the Leased Property in their bankruptcy schedules as property in which they had an interest. Sup. Ct. App., pages 1-4, which were excerpted from the Dormans' bankruptcy schedules.

More than sixty days after they filed bankruptcy, the Dormans moved pursuant to 11 U.S.C. § 365(d)(4) to extend the time within which they could seek to assume or reject unexpired leases, such as those through which they claimed their interests in the Leased Property (the "Motion to Extend"). Tenth Cir. App., Tab 1, Ex. B, pages 1-2. The Motion to Extend was admittedly not filed timely under 11 U.S.C. § 365(d)(4). *See, e.g.*, the Dormans' Petition, page 31 ("[T]he attorney for the debtors had allowed the time limit for rejecting or assuming the [leases covering the Leased Property] to lapse . . . .")

A few days before the extension requested in the Motion to Extend was to expire, the Bankruptcy Court approved the appointment of a trustee in the Dormans' bankruptcy case (the "Trustee"). Tenth Cir. App., Tab 1, Ex. A, page 1. Upon his appointment, the Trustee replaced the Dormans as the representative of the Dormans' bankruptcy estate. 11 U.S.C. § 323(a).

After the Trustee was appointed, the Dormans' counsel filed a second motion seeking an extension of time within which to assume or reject unexpired leases (the "Second Request"). *See* Tenth Cir. App., Tab 1, Ex. A, page 1, and Ex. G, page 9, docket entry 80. The Bankruptcy Court never granted the Second Request, which would have expired years ago even if it had been granted. Tenth Cir. App., Tab 1, Ex G, pages 1 *et seq.*

The Trustee did not join in the Second Request or independently seek an extension of time to assume or reject unexpired leases. *id.* No one sought an extension of time beyond the extension sought in the Second Request. *id.*

After filing the Second Request, the Dormans' counsel discovered that the Bankruptcy Court had not granted the Motion to Extend. The Dormans' counsel then submitted to the Bankruptcy Court what was represented to be an unopposed order granting the Motion to Extend. Sup. Ct. App., page 5. Based on the representation that it was unopposed, the Bankruptcy Court entered an order granting the Motion to Extend (the "Extension Order"). *id.*

The only reason Jones and Westbrook had not opposed the untimely Motion to Extend was because it had never been served on them or their counsel. As soon as Jones' and Westbrook's counsel discovered that the Dormans' counsel had filed the Motion to Extend and that the Bankruptcy Court had entered the Extension Order, Jones' and Westbrook's counsel immediately filed a motion to vacate the Extension Order and requested an order directing the Trustee to immediately surrender the Leased Property (the "Motion to Vacate"). Sup. Ct. App., pages 6-10. The Motion to Vacate was based on the fact that the Motion to Extend was not timely under 11 U.S.C. § 365(d)(4) and that the leases through which the Dormans claimed their interest in the Leased Property had therefore been deemed rejected. *id.*

The Motion to Vacate was set for hearing by *ex parte* application and order. Sup. Ct. App., pages 11-13. The *ex parte* order also shortened the time within which parties were to respond to the Motion to Vacate. Sup. Ct. App., pages 14-15. No other *ex parte* relief was sought or granted to Jones and Westbrook and the Dormans' counsel never complained about the *ex parte* order setting the hearing and shortening the response time. *See generally,* Tenth Cir. App., Tab 1, Ex. G, pages 1 *et seq.*

The Bankruptcy Court heard the Motion to Vacate in open court approximately a week after it was filed. The Dormans' counsel, the Trustee, and the Trustee's counsel were all present and actively participated in that hearing. After hearing the arguments of counsel and the uncontested facts, the Bankruptcy Court entered an order that vacated the Extension Order and directed the Trustee to immediately surrender the Leased Property to Jones and Westbrook (the "Surrender Order"). Sup. Ct. App., pages 16-17.

The Dormans appealed the Surrender Order to the District Court and sought a stay pending appeal. The District Court denied the Dormans' request for a stay. The Dormans' Petition, pages 62-65. The Dormans appealed the District Court's denial of a stay, but the appeal was dismissed on jurisdictional grounds. *See* Tenth Cir. App., Tab 2, pages 1-2, in which the District Court recounts this history.

Very shortly after the Bankruptcy Court entered the Surrender Order, Jones and Westbrook re-let the Leased Property to several third parties, none of whom were parties to the Dormans' bankruptcy case. Tenth Cir. App., Tab 1, Ex's. C and D. These third parties were never made parties to the Dormans' appeal. *See* Tenth Cir. App., Tab 3, pages 1 *et seq.*

At or about the same time Jones and Westbrook re-let the Leased Property, they and the Trustee, as representative of the Dormans' bankruptcy estate, entered into a settlement that resolved the issues ultimately underlying the Dormans' appeal of the Surrender Order. Tenth Cir. App., Tab 1, Ex. E, pages 1 et seq. This settlement was approved in a Bankruptcy Court order entered on a motion the Trustee's counsel certified had been served on everyone listed on the mailing matrix in the Dormans' bankruptcy case, which would have included the Dormans. Tenth Cir. App., Tab 1, Ex. F, pages 1-3; *see also* Sup. Ct. App., pages 18-29 and 30-31. The Dormans did not oppose Jones' and Westbrook's settlement with the Trustee or appeal the Bankruptcy Court order approving it.

Because the Leased Property had been re-let to third parties who were not before the District Court and because all issues ultimately underlying the Dormans' appeal of the Surrender Order had been resolved in the Bankruptcy Court approved settlement, Jones and Westbrook filed a motion in the District Court to dismiss the Dormans' appeal as moot. Tenth Cir. App., Tab 1. The Dormans did not respond to Jones' and Westbrook's motion to dismiss, although it was served on them. *id.; see also* Tenth Cir. App., Tab 3. Nonetheless, Jones' and Westbrook's motion to dismiss was not granted by default. Tenth Cir. App., Tab 2, pages 1 *et seq.* The District Court considered the arguments and evidence presented to it and concluded that the Dormans' appeal had become moot. *id.* Accordingly, the District Court granted Jones' and Westbrook's motion to dismiss.[3]

The Dormans appealed the District Court dismissal of their appeal to the Tenth Circuit, which affirmed. The Dormans then sought rehearing, which the Tenth Circuit denied. The Dormans' Petition for a Writ of *Certiorari* followed.

SUMMARY OF THE ARGUMENT

In their words, the Dormans "are requesting the Supreme Court to review [their] bankruptcy case . . ." and "restore their property — their family farm." The Dormans' Petition, pages 8 and 29, respectively. Succinctly, the Dormans are seeking wholesale review of and relief from virtually every order entered in their bankruptcy case. To that end, the Dormans present dozens of questions touching on seemingly every facet of their bankruptcy case. However, practically none of those questions would properly come before this Court if *certiorari* were granted. The only question that would properly come before this Court is whether the Tenth Circuit erred in affirming the District Court order dismissing the Dormans' appeal from the Surrender Order as moot. The Tenth Circuit did not err. As a result, the Dormans' petition should be denied.

---

[3] The Dormans have appended copies of various orders to their petition that are not exact reproductions. The orders appended by the Dormans include a number of transcription errors not present in the original orders and include emphasis added by the Dormans. The transcription errors and added emphasis do not appear to substantively change the orders.

ARGUMENT

A. *THIS CASE WAS CORRECTLY DECIDED BELOW.*

The Tenth Circuit was correct in affirming the District Court order dismissing the Dormans' appeal from the Surrender Order as moot. The mootness doctrine is grounded in the "case or controversy" limitation, which insures that federal courts exercise their power only in a true adversary context. *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975). When events occur that prevent a federal court from granting a litigant effective relief, the case has become moot and should be dismissed. *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 133, 40 L.Ed. 293 (1895). That is precisely what happened here.

1. *The Bankruptcy Court approved settlement mooted the Dormans' appeal of the Surrender Order.*

Jones and Westbrook entered into a Bankruptcy Court approved settlement agreement with the representative of the Dormans' bankruptcy estate, *i.e.*, the Trustee, that mooted the Dormans' appeal of the Surrender Order. That settlement resolved all claims the Dormans may have had to the Leased Property. The Dormans' failure to oppose and appeal that Bankruptcy Court order made it impossible for the District Court to grant the Dormans effective relief. Regardless what the District Court might have otherwise done with respect to the Surrender Order, the Bankruptcy Court approved settlement between Jones, Westbrook, and the Trustee precluded the Dormans from ever achieving their objective, *i.e.*, regaining the Leased Property. This rendered the Dormans' appeal moot. As a result, the District Court's dismissal of the Dormans' appeal was proper and the Tenth Circuit's affirmance of the dismissal was correct. *Burke v. Barnes*, 479 U.S. 361, 363, 107 S. Ct. 734, 736, 93 L.Ed.2d 732 (1987) (Article III requires a live case or controversy at the time a federal court decides a case.)

The only direct argument the Dormans seem to offer to avoid the effect of the Bankruptcy Court approved settlement is an alleged lack of notice of the settlement. However, the facts do not support the Dormans' allegation. The certificate of service on the motion requesting approval of the settlement between Jones, Westbrook, and the Trustee shows that the motion was served on everyone listed on the mailing matrix in the Dormans' bankruptcy case. The Dormans were listed on that mailing matrix. Moreover, the Dormans never raised this lack of notice issue below. As a result the Dormans' lack of notice argument should not be considered on *certiorari*. *Duignan v. United States*, 274 U.S. 195, 200, 47 S.Ct. 566, 568, 71 L.Ed. 996 (1927).

2. *The Dormans' failure to join all parties whose rights would have been effected by the appeal of the Surrender Order rendered that appeal moot.*

Shortly after the Surrender Order was entered, the Leased Property was re-let for value to third parties. These third parties were not made parties to the Dormans' appeal of the Surrender Order. This made it impossible for the District Court to grant the Dormans effective relief and, thus, rendered the Dormans' appeal of the Surrender Order moot. *Valley National Bank of Arizona v. Trustee of Westgate-California Court, Inc.*, 609 F.2d 1274, 1283 (9th Cir. 1979);

Matter of Combined Metals Reduction Co., 557 F.2d 179, 194 (9th Cir. 1977). Consequently, both the District Court's dismissal of the Dormans' appeal as moot and the Tenth Circuit's affirmance of that dismissal were proper.

3. *Expiration of all requested extensions mooted the Dormans' appeal of the Surrender Order.*

All requested extensions of time to assume or reject the leases through which the Dormans claimed their interest in the Leased Property expired long before the District Court dismissed the Dormans' appeal on mootness grounds. When the last of those requested extensions expired, the propriety of the Bankruptcy Court's ruling in the Surrender Order became nothing more than a hypothetical inquiry. As soon as the last of the extensions expired, the leases through which the Dormans claimed their interest in the Leased Property were deemed under 11 U.S.C. § 365(d)(4) to have been rejected, regardless whether the Bankruptcy Court erred in the Surrender Order. Consequently, the District Court's dismissal of the Dormans' appeal was proper and the Tenth Circuit's affirmance was correct. *See Aetna Life Ins. Co. of Hartford, Conn. v. Haworth,* 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937).

B. *VIRTUALLY NONE OF THE QUESTIONS PRESENTED BY THE DORMANS WOULD PROPERLY COME BEFORE THIS COURT IF CERTIORARI WERE GRANTED.*

Virtually none of the questions presented by the Dormans would properly come before this Court if *certiorari* were granted. The Dormans listed dozens of questions in their petition that are totally unrelated to the question whether the Tenth Circuit erred in affirming the District Court order dismissing their appeal of the Surrender Order as moot (the "Mootness Question"). Those unrelated questions, which range from whether venue was proper in connection with certain occurrences in the Dormans' bankruptcy case to whether the Dormans' Fourth, Sixth, and Eighth Amendment rights were infringed in their bankruptcy case, would not properly come before this Court if *certiorari* were granted.

There are a number of reasons why the questions unrelated to the Mootness Question would not properly come before this Court if *certiorari* were granted. First, the Dormans did not present and obtain rulings below on those unrelated questions. As a result, under traditional Supreme Court practice, the unrelated questions should not be reviewed on *certiorari*. *Duignan, supra.*

Second, the unrelated questions are clearly an improper attempt by the Dormans to collaterally attack almost every order entered during their bankruptcy case. The Dormans did not timely attack those orders directly below and may not now attack them collaterally here. *Sampsell v. Imperial Paper & Color Corporation,* 313 U.S. 215, 218-19, 61 S.Ct. 904, 907, 85 L.Ed. 1293 (1941).

Third, the unrelated questions directly involve the rights of many participants in the Dormans' bankruptcy case. However, at most, very few of those participants were named as parties to the appeal below or are parties here. This Court could not properly grant the Dormans any relief on the questions that involve participants in the Dormans' bankruptcy that were not parties to the appeal below and are not parties here. Consequently, this Court should deny the Dormans' petition insofar as it seeks review of those questions. *Terry v. Abraham,* 93 U.S. 38, 3 Otto 38, 23 L.Ed. 794 (1876).

Fourth, the record would not permit this Court to review the questions the Dormans wish to present that are unrelated to the Mootness Question. Accordingly, this Court should deny the Dormans' petition insofar as it seeks review of those questions. *See Erie R. Co. v. Kirkendall*, 266 U.S. 185, 45 S.Ct. 33, 69 L.Ed. 236 (1924).

Fifth, some or all of the orders the Dormans wish to attack are moot, *e.g.*, the order confirming the plan of reorganization in the Dormans' bankruptcy case. *See, e.g.*, the Dormans' Petition, page 36 (admitting that their property has already been liquidated and all creditors have already been paid). As a result, this Court could not grant the Dormans effective relief. The Dormans' petition should therefore be denied insofar as it seeks review of moot orders. *Burke, supra.*

For each of the reasons stated above, the questions presented by the Dormans that are not related to the Mootness Question would not properly be addressed if *certiorari* were granted. The Dormans' petition should be denied insofar as it seeks review of those questions.

C. *THE SURRENDER ORDER WAS NOT ERRONEOUS.*

Although they are amongst the questions that would not properly come before this Court if *certiorari* were granted, the Dormans pose several questions addressing the correctness of the Surrender Order ultimately underlying their appeal. Those questions are based on two flawed arguments.

The first is the Dormans' argument that they somehow owned their interest in the Leased Property separate and apart from their bankruptcy estate. *See, e.g.*, the Dormans' Petition, page 21. This argument is contrary to both the law and facts. With limited exceptions not relevant here, all property in which a debtor holds a pre-bankruptcy interest will become property of the bankruptcy estate upon the commencement of a bankruptcy case. 11 U.S.C. § 541(a)(1). The Dormans admit that they leased the Leased Property. The Dormans' Petition, page 21 ("John. C. Dorman and Wilma Dorman . . . leased certain nonresidential real property from Jones and Westbrook.") The Dormans also signed bankruptcy schedules under penalty of perjury in which they listed the Leased Property as property in which they held an interest. Thus, the Dormans' argument that they owned their interest in the Leased Property in a fashion where it did not become part of their bankruptcy estate is contrary to the law and facts.

The second argument the Dormans offer in support of their claim that the Surrender Order was erroneous is that 11 U.S.C. § 365(d)(4) "does not apply to rehabilitation cases; but to large shopping mall [sic] . . . ." The Dormans' Petition, page 25. This argument is contrary to the plain language of 11 U.S.C. § 365(d)(4), which states in relevant part:

> in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

The plain language of 11 U.S.C. § 365(d)(4) shows that it applies in every bankruptcy case in which the debtor is a lessee of nonresidential real property, regardless of the Chapter under which the bankruptcy case is filed and regardless of the type of debtor involved. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989).

The facts show that the Dormans' interest in the Leased Property was property of the Dormans' bankruptcy estate. The facts also show that the Dormans did not timely seek to extend the time within which they could seek to assume or reject the leases through which they claimed their interest in the Leased Property. Under the plain language of 11 U.S.C. § 365(d)(4), those leases were therefore deemed to have been rejected. As a result, the Surrender Order was correct and, leaving aside all other considerations, should not be reviewed on *certiorari.*

CONCLUSION

Only one question would properly come before this Court if *certiorari* were granted and that question was correctly decided below. The Tenth Circuit correctly affirmed the District Court's determination that the Dormans' appeal of the Surrender Order had become moot. Events occurring while the Dormans' appeal was pending made the relief ultimately sought unavailable. As a result, affirmance of the dismissal of the Dormans' appeal was not a departure by the Tenth Circuit from the accepted and usual course of judicial proceedings, did not sanction such a departure by a lower court, and does not implicate any other special and important reason for granting review. The Dormans' Petition for a Writ of *Certiorari* should therefore be denied.

Jones and Westbrook further submit that the Dormans' petition is extraordinarily frivolous and that damages and double costs should therefore be awarded against the Dormans under Supreme Court Rules 42.2 and 43.7.

WHEREFORE, the respondents, Pauline Jones and Ann Ell Westbrook pray that the Dormans' Petition for a Writ of *Certoriari* be denied and that Jones and Westbrook have such other and further relief as is just and proper, including an award of damages, attorney's fees, and double costs incurred in opposing the Dormans' petition.

Respectfully submitted,

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ATTORNEYS FOR THE RESPONDENTS,
PAULINE JONES AND
ANN ELL WESTBROOK

*Counsel of Record

No. 95-307

In The

Supreme Court of the United States

October Term, 1995

John C. Dorman and Wilma L. Dorman,
Petitioners,

versus

Pauline Jones and Ann Ell Westbrook, et al.,
Respondents.

APPENDIX TO BRIEF OF THE RESPONDENTS, PAULINE JONES AND ANN ELL WESTBROOK, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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FORM B6 - Cont.
(6/90)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

IN RE: JOHN C. DORMAN and WILMA L. DORMAN, Debtors. Case No. BK. 92-16654 LN
Filed December 1, 1992 Ch 12

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedule A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

			Amounts Scheduled		
Name of Schedule	**Attached (Yes/No)**	**No. Of Sheets**	**Assets**	**Liabilities**	**Other**
A. Real Property	Yes	3	$280,000.00		
B. Personal Property	Yes	6	$418,645.00		
C. Property Claimed As Exempt	Yes	3			
D. Creditors Holding Secured Claims	Yes	2		$563,335.00	
E. Creditors Holding Unsecured Priority Claims	Yes	2		$ 4,000.00	
F. Creditors Holding Unsecured Nonpriority Claims	Yes	4		$71,192.00	
G. Executory Contracts and Unexpired Leases	Yes	1			
H. Codebtors	Yes	1			
I. Current Income of Individual Debtor(s)	Yes	1			$24,210.00
J. Current Expenses of Individual Debtor(s)	Yes	1			$ 2,734.00
Total Number of Sheets In ALL Schedules		24			
		Total Assets	$698,645.00		
			Total Liabilities	$638,527.00	

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FORM B6G
(10/89)

IN RE: JOHN C. DORMAN and WILMA L. DORMAN, Debtors. Case No. BK. 92-16654 LN

SCHEDULE G — EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests.

State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease.

Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT
Pauline Jones 1105 Westhaven Liberal, KS 67901 *10 Year Lease*	1164 ac. dryland Rent: 1/3 of crop 255 acres grass
Pauline Jones 1105 Westhaven Liberal, KS 67901 *10 Year Lease*	392 ac. irrigated Rent: 50% crop $1,402/annual
Mary Lou Nassaman 7009 Cottonwood Shawnee Mission, KS 66216	160 acres crops* Rent: 1/6
Carol L. Yates 433 Westfield Court Wichita, KS 67212	160 acres crops* Rent: 1/6 of crops *co-owners

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FORM B6-
Cont.
(6/90)

IN RE: JOHN C. DORMAN and WILMA L. DORMAN,
Debtors. Case No. BK. 92-16654 LN

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 25 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date: 10/06/92 /s/ John C. Dorman
Debtor

Date: 10/06/92 /s/ Wilma Dorman
(Joint Debtor, if any)

(If joint case, both spouses must sign)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the ________________________ (the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership) of the ________________________ (corporation or partnership) named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of ______________ (total shown on summary page plus 1) sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date ______________________

Signature ________________________

____

(Print or type name of individual signing on behalf of debtor)

(An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.)

Penalty for making a false statement or concealing property. Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C.A. §§ 152 and 3571.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:)
)
JOHN C. DORMAN and) Case No. BK. 92-16654 LN
WILMA L. DORMAN,) (Chapter 11)
)
Debtors.) Filed February 8, 1993

ORDER EXTENDING TIME TO ASSUME OR REJECT EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES

Upon application by the Debtors for an extension of time to assume or reject executory contracts and/or unexpired leases, and there having been no objection filed within the time allowed to the granting of the relief requested in the Application, pursuant to Fed.R.Bankr.9006, the time for Debtors to assume or reject executory contracts is extended to February 8, 1993.

Date: February 8, 1993

/s/ Paul B. Lindsey
United States Bankruptcy Judge

Prepared By:
/s/ D. Benham Kirk
Charles R. Underwood OBA #11553
D. Benham Kirk, Jr. OBA #5044
Underwood, Bardrick & Kirk
P.O. Box 13548
Oklahoma City, OK 73113-1548

Attorneys For Debtors

Approved:
Assistant U.S. Trustee
By: /s/ Mark B. Toffoli

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:)
)
JOHN C. DORMAN and) Case No. BK. 92-16654 LN
WILMA L. DORMAN,) (Chapter 11)
)
Debtors.)

MOTION TO VACATE ORDER EXTENDING TIME TO ASSUME OR REJECT EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES, MOTION FOR ORDER COMPELLING IMMEDIATE SURRENDER OF PROPERTY, AND BRIEF IN SUPPORT

COME NOW Pauline Jones and Ann Ell Westbrook (the "Movants") and move the Court to vacate the Order Extending Time to Assume or Reject Executory Contracts and/or Unexpired Leases entered on February 8, 1993 ("the Order"). The Movants further move for an order compelling the Debtors to immediately surrender the nonresidential real property described below. The Movants state as follows in support of this Motion:

1. This case was commenced as a voluntary Chapter 11 on October 8, 1992 and an order for relief was entered on that date. 11 U.S.C. § 301.

2. Prior to the commencement of this case, the Movants leased the following nonresidential real property to the Debtors:

> The South Half of the Northeast Quarter of Section 22; the Southwest Quarter of Section 15; the South Half of Section 16; the Southeast Quarter of Section 17; the South Half of Section 19; the Northwest Quarter of Section 21; the Southeast Quarter of Section 21; the North

> Half of the Southwest Quarter of Section 21, all in Township 5, Range 22, Beaver County, Oklahoma

(the "Leased Property").

3. On December 8, 1992, the Debtors moved to extend the time within which to assume or reject unexpired leases (the "Motion"). Although counsel for the Movants filed an entry of appearance in this case on November 10, 1992 and had preliminary discussions with counsel for the Debtors about an agreed extension of the time within which to assume or reject unexpired leases, the Motion was not served on counsel for the Movants. Counsel for the Movants first learned in mid to late January of 1993 that the Motion had been filed when the undersigned obtained and reviewed a copy of the docket sheet.

4. Section 365(d)(4) of the Bankruptcy Code provides that:

> "if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such sixty-day period, fixes, then such lease is deemed rejected . . ."

5. The Motion was not filed or served within sixty days after the date of the order for relief. As a result, the lease between the Movants and the Debtors was rejected by operation of law and the Court did not have authority to enter the Order. See, *In re: Tompkins,* 95 B.R. 722, 724 (9th Cir. BAP 1989), applying the sixty-day period specified in 11 U.S.C. § 365(d)(1); In accord, *In re: Butcher Shop and Deli of Miami, Inc.*, 45 B.R. 239, 240 (Bankr. S.D. Fla. 1984); See also *In re: Southwest Aircraft Services, Inc.*, 831 F.2d 848, 850 (9th Cir. 1987): ". . . [T]he debtor must file its motion to show

cause [for the extension] within [the sixty-day period] . . ."; See also, *Matter of American Health-Care Management, Inc.* 900 F.2d 827, 830 (5th Cir. 1990): " . . . [A] bankruptcy court may grant . . . extensions of the time in which a lessee must assume or reject its leases of nonresidential real property so long as a motion to extend is brought prior to the expiration of the period . . ."

6. Under Local Bankruptcy Rule 12(h)(4), if an order is not submitted and filed within twenty days of the expiration of the response period, the motion will be stricken. Assuming the response time on the Motion had expired, as represented in the Order and despite the Motion never having been served on counsel for the Movants, the Order was submitted well outside the time period specified in Local Bankruptcy Rule 12(h)(4). In fact, the Order was submitted only after counsel for the Debtors was told on or about February 4, 1993 by the undersigned that the Motion was not timely and that no order thereon had ever been entered. The Order, which was never served on counsel for the Movants and only came to their attention through an offhand comment by counsel for the Trustee, was therefore submitted and entered on a motion that was either deemed to have been stricken or that should have been stricken. Consequently, the Order should be vacated.

7. With respect to nonresidential real property subject to a rejected lease, 11 U.S.C. § 365(d)(4) also provides that: " . . . the trustee shall immediately surrender such nonresidential real property to the lessor." The Movants are therefore entitled to an order compelling the Debtors to immediately surrender the Leased Property. *In re: Elm Inn, Inc.*, 942 F.2d 630, 633 (9th Cir. 1991).

WHEREFORE, Pauline Jones and Ann Ell Westbrook pray that the Order Extending Time to Assume or Reject Executory Contracts and/or UnexpiredLeases entered on February 8, 1993 be vacated, that an Order compelling the Debtors to immediately surrender the above described premises to the Movants be entered, and that the Movants have such other and further relief as is just and proper.

Respectfully submitted,

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(405) 848-4810

ATTORNEYS FOR PAULINE JONES
AND ANN ELL WESTBROOK

CERTIFICATE OF SERVICE

The undersigned certifies that on the 16th day of February, 1993, a true and correct copy of the foregoing Motion to Vacate Order Extending Time to Assume or Reject Executory Contracts and/or Unexpired Leases, Motion for Order Compelling Immediate Surrender of Property, and Brief in Support was hand delivered to the following:

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Oklahoma City, OK 73116

D. Benham Kirk
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Karla Finnell
801 N.W. 34th St.
Oklahoma City, OK 73118

/s/ Stephen W. Elliott

518.01/P6

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
JOHN C. DORMAN and	)	Case No. BK. 92-16654 LN
WILMA L. DORMAN,	)	(Chapter 11)
	)	
Debtors.	)	

APPLICATION FOR AN ORDER SHORTENING THE RESPONSE TIME TO MOTION TO VACATE ORDER EXTENDING TIME TO ASSUME OR REJECT EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES AND MOTION FOR ORDER COMPELLING IMMEDIATE SURRENDER OF PROPERTY AND SETTING HEARING THEREON

COME NOW Pauline Jones and Ann L. Westbrook ("the Applicants") and apply for an Order Shortening the Response Time to their Motion to Vacate Order Extending Time to Assume or Reject Executory Contracts and/or Unexpired Leases and Motion for Order Compelling Immediate Surrender of Property (collectively the "Motions"). The Applicants state as follows in support hereof:

1. A confirmation hearing on the Debtors' plan of reorganization is set for March 26, 1993 at 9:00 a.m.

2. Prior to the commencement of this case, the Applicants leased significant acreage to the Debtors.

3. The Applicants' acreage is approximately half of the total acreage farmed by the Debtors.

4. Without the Applicants' acreage, the Debtors' plan of reorganization does not appear to be feasible.

5. As set forth in the Motions, the Applicants contend that the lease between them and the Debtors

has been rejected by operation of law. The Applicants further contend that the leased acreage is therefore no longer available to the Debtors.

6. Given the significance of the Applicants' acreage to the Debtors plan of reorganization, the Applicants respectively submit that shortening the response time on the Motions and setting the Motions for hearing at the same time as the hearing on confirmation of the Debtors' plan of reorganization is appropriate.

WHEREFORE Pauline Jones and Ann L. Westbrook pray that the court shorten the time to respond to their Motion to Vacate Order Extending Time to Assume or Reject Executory Contracts and/or Unexpired Leases and Motion for Order Compelling Immediate Surrender of Property to 5 days and further pray that the court sets those Motions for hearing on March 26, 1993 at 9:00 a.m.

Respectfully submitted,

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ATTORNEYS FOR PAULINE JONES
AND ANN ELL WESTBROOK

CERTIFICATE OF SERVICE

The undersigned certifies that on the 16th day of February, 1993, a true and correct copy of the foregoing Application For An Order Shortening The Response Time To Motion To Vacate Order Extending Time To Assume Or Reject Executory Contracts and/or Unexpired Leases and Motion for Order Compelling Immediate Surrender of Property and Setting Hearing Thereon was hand delivered to the following:

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/s/ Stephen W. Elliott

518.01/P7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:)
)
JOHN C. DORMAN and) Case No. BK. 92-16654 LN
WILMA L. DORMAN,) (Chapter 11)
)
Debtors.)

ORDER SHORTENING RESPONSE TIME AND SETTING HEARING

Upon consideration of the Application for an Order Shortening Response Time to Motion to Vacate Order Extending Time to Assume or Reject Executory Contracts and/or Unexpired Leases and Motion for Order Compelling Immediate Surrender of Property filed by Pauline Jones and Ann Ell Westbrook, and for good cause shown,

IT IS ORDERED, ADJUDGED AND DECREED that the response time to the foregoing motions is hereby shortened to 5 days from the date hereof.

IT IS ORDERED, ADJUDGED AND DECREED that such motions are set for hearing before the undersigned in the sixth floor courtroom, 201 Dean A. McGee Avenue, Oklahoma City, Oklahoma 73102, on the 23rd day of February, 1993, at 9:00 a.m.

IT IS SO ORDERED.

DATED this 16th day of February, 1993.

/s/ Paul B. Lindsey
PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE

APPROVED FOR ENTRY:

/s/ Stephen W. Elliott
Stephen W. Elliott, OBA#2685
PRINGLE & PRINGLE
A Professional Corporation
1601 Northwest Expressway
Suite 2100
Oklahoma City, Oklahoma 73118
(405) 848-4810

ATTORNEYS FOR PAULINE JONES
AND ANN ELL WESTBROOK

518.01/P8

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:)
)
JOHN C. DORMAN and) Case No. BK. 92-16654 LN
WILMA L. DORMAN,) (Chapter 11)
)
Debtors.)

ORDER GRANTING MOTION TO VACATE ORDER EXTENDING TIME TO ASSUME OR REJECT EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES AND MOTION FOR ORDER COMPELLING IMMEDIATE SURRENDER OF PROPERTY

Upon consideration of the Motion to Vacate Order Extending Time to Assume or Reject Executory Contracts and/or Unexpired Leases and Motion for Order Compelling Immediate Surrender of Property filed by Pauline Jones and Ann Ell Westbrook (the "Motions"), and after considering the arguments of counsel, the Court concludes for the reasons stated orally and recorded in open court that the Motions should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Order Extending the Time to Assume or Reject Executory Contract and/or Unexpired Leases that was entered on February 8, 1993 is hereby vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lease of non-residential real property between the debtors, Pauline Jones and Ann Ell Westbrook (the "Lease") is deemed to have been rejected.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the non-residential real property under the Lease (the "Leased Acreage") shall immediately be surrendered by the trustee to Pauline Jones and Ann Ell Westbrook.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this order is entered without prejudice to the parties' rights, if any, in crops planted on the Leased Acreage after October 8, 1992.

DATED: February 24, 1993

IT IS SO ORDERED.

/s/ Paul B. Lindsey
PAUL B. LINDSEY
UNITED STATES BANKRUPTCY JUDGE

APPROVED FOR ENTRY:

/s/ Stephen W. Elliott
Stephen W. Elliott, OBA#2685
PRINGLE & PRINGLE
A Professional Corporation
1601 Northwest Expressway
Suite 2100
Oklahoma City, Oklahoma 73118
(405) 848-4810

ATTORNEYS FOR PAULINE JONES
AND ANN ELL WESTBROOK

518.01/P12

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
JOHN and Wilma DORMAN,	)	Case No. BK. 92-16654 LN
	)	Chapter 11
	)	
Debtors.	)	

MOTION TO COMPROMISE CONTROVERSY AND NOTICE TO CREDITORS OF PROPOSED COMPROMISE

Jack Cornelius, Trustee herein, respectfully represents

1. That movant is the duly appointed, qualified, and acting trustee in the above named bankruptcy estate.

2. Before the Bankruptcy Case was commenced, Jones and Westbrook leased the following nonresidential real property to John C. Dorman and Wilma L. Dorman (the "Dormans"):

> The South Half of the Northeast Quarter of Section 22; the Southwest Quarter of Section 15; the south Half of Section 16; the Southeast Quarter of Section 17; the South Half of Section 16; the Southeast Quarter of Section 17; the South Half of Section 19; the Northwest Quarter of Section 211; the Southeast Quarter of Section 21; the North Half of the Southwest Quarter of Section 21; the North Half of the Southwest Quarter of Section 21, all in Township 5, Range 22, Beaver County Oklahoma.

3. Before the Bankruptcy Case was commenced, Jones leased certain additional nonresidential real property to the Dormans (the "Pasture Lease"). The

property leased to the Dormans under the Agricultural Lease and the Pasture Lease is collectively referred to herein as the "Leased Property".

4. On February 24, 1993, an order was entered in the Bankruptcy Case that decreed the Agricultural Lease to have been rejected under 11 U.S.C. Section 365 and that ordered Trustee to immediately surrender the property under the Agricultural Lease to Jones and Westbrook.

5. A wheat crop is now growing on the property formerly under the Agricultural Lease (the "Wheat Crop").

6. Jones and Westbrook have made certain claims in the Bankruptcy Case concerning matters arising from or relating to Agricultural Lease, the Pasture Lease, the Leased Property, and the Wheat Crop.

7. Trustee has informally made certain claims concerning the wheat crop and certain claims with respect to the rebate of cash rent paid to Jones on the Pasture Lease.

8. The parties each deny the validity of the other's claims.

9. In contemplation of the costs of litigation and the merits of their respective cases, and mindful of the goal of efficient administration of the estate, the parties desire to compromise, settle, and resolve all disputes, claims, actions, suits, demands, causes of action, and liabilities between them that arise from or related in any way to the Agricultural Lease, the Pasture Lease, the Wheat Crop, or the leased property.

10. The following is a summary of the terms of the settlement agreement:

- The Trustee shall have the right to harvest the Wheat Crop.

- Lessors shall receive 50% of the wheat crop growing upon the irrigated agricultural and 33% of the wheat crop growing upon the dry agricultural land as crop rent.

- Lessees shall receive 50% of the wheat crop growing upon the irrigated agricultural land and 66% of the wheat crop growing upon the dry agricultural land.

- ASCS payments attributable to the crop shall be divided between the parties in the same manner as the Wheat crop.

- Lessors' portion of the wheat crop and ASCS payments are not property of the bankruptcy estate and are not subject to the cost of administration. Lessee's portion of the wheat crop and ASCS payments are property of the bankruptcy estate pursuant to 11 U.S.C. Section 541.

- The estate shall bear the cost of harvesting, including delivering lessors' portion of the crop to the nearest commercial elevator.

- All leased land shall be surrendered effective April 2, 1993. The surrender of the land does not effect Trustee's right to harvest the wheat crop.

- The compromise agreement releases Jones, Westbrook, and the Dorman bankruptcy estate of all claims, of any nature, arising prior to the settlement agreement.

- The lessees' share of the wheat crop growing upon the agricultural land and the lessees' share of ASCS payments attributable to said crop are property of the bankruptcy estate pursuant to 11 U.S.C. Section 541.

11. The complete compromise agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

12. The Trustee respectfully submits that pursuant to Fed. R. Bankr. P 2002(a), an objection period of twenty (20) days after the date of filing of this Application is sufficient, and that an Order Compromising Controversy and Approving Compromise Agreement shall be entered herein and the allegations contained herein deemed confessed, unless a hearing is requested and a formal objection is filed in this proceeding the Clerk's Office of the United States Bankruptcy Court, and a copy is delivered to the undersigned counsel for the Trustee.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order Compromising Controversy and Approving Settlement and Release Agreement, and for such other relief at law or in equity as may be just.

/s/ Karla J. Finnell
Karla J. Finnell
4000 N. Classen Blvd.
Suite 103N
Oklahoma City, OK 73118
(405) 528-0713
Attorney for Trustee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was mailed via first class mail, postage prepaid to all persons whose names appear upon the matrix herein and to all persons who have entered an appearance herein on April 23, 1993.

/s/ Karla J. Finnell
Karla J. Finnell

COMPROMISE AGREEMENT

This Compromise Agreement (the "Agreement") is entered into on April , 1993, by and between Pauline Jones ("Jones"), Ann Ell Westbrook ("Westbrook"), and Jack Cornelius, in and only in his capacity as trustee in the joint chapter 11 bankruptcy case styled: *In re: John C. Dorman and Wilma L. Dorman,* Case No. BK-92-16654-LN, United States Bankruptcy Court for the Western District of Oklahoma ("Trustee").

RECITALS

A. Trustee is the duly appointed, qualified, and acting trustee in the bankruptcy case styled: *In re: John C. Dorman and Wilma L. Dorman,* Case No. BK-92-16654-LN, in United States Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Case").

B. Before the Bankruptcy Case was commenced, Jones and Westbrook leased the following nonresidential real property to John C. Dorman and Wilma L. Dorman (the "Dormans"):

> The South Half of the Northeast Quarter of Section 22; the Southwest Quarter of Section 15; the South Half of Section 16; the Southeast Quarter of Section 17; the South Half of Section 19; the Northwest Quarter of Section 21; the Southeast Quarter of Section 21; the North Half of the Southwest Quarter of Section 21, all in Township 5, Range 22, Beaver County, Oklahoma

(the "Agricultural Lease").

C. Before the Bankruptcy Case was commenced, Jones leased certain additional nonresidential real property to the Dormans (the "Pasture Lease"). The property leased to the Dormans under the Agricultural Lease and the Pasture Lease is collectively referred to herein as the "Leased Property".

D. On February 24, 1993, an order was entered in the Bankruptcy Case that decreed the Agricultural Lease to have been rejected under 11 U.S.C. § 365 and that ordered Trustee to immediately surrender the property under the Agricultural Lease to Jones and Westbrook.

E. A wheat crop is now growing on the property formerly under the Agricultural Lease (the "Wheat Crop").

F. Jones and Westbrook have made certain claims in the Bankruptcy Case concerning matters arising from or relating to the Agricultural Lease, the Pasture Lease, the Leased Property, and the Wheat Crop.

G. Trustee has informally made certain claims concerning the Wheat Crop and certain claims with respect to the rebate of cash rent paid to Jones on the Pasture Lease.

H. The parties each deny the validity of the other's claims.

I. The parties desire to compromise, settle, and resolve all disputes, claims, actions, suits, demands, causes of action, and liabilities between them that arise from or relate in any way to the Agricultural Lease, the Pasture Lease, the Wheat Crop, or the Leased Property.

NOW THEREFORE for good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. *The Wheat Crop.* Trustee shall have the right to harvest the Wheat Crop so long as harvesting it would be consistent with reasonably prudent farming practices. As soon as harvesting the Wheat Crop would no longer be consistent with reasonably prudent farming

practices, Trustee' interest therein shall be deemed to have been relinquished to Jones and Westbrook and Trustee shall no longer have any interest therein.

Should a dispute arise between Trustee and Jones and Westbrook about whether harvesting the Wheat Crop would no longer be consistent with reasonably prudent farming practices, the parties agree to submit that dispute to the bankruptcy court for an expedited resolution. In no event shall Trustee graze cattle on the Wheat Crop or any stubble remaining after the harvest thereof.

2. *Post Petition Rent and Harvest Expenses.* In full satisfaction of their claim for post petition rent on the property formerly under the Agricultural Lease, Jones and Westbrook shall receive fifty percent (50%) of the Wheat Crop harvested from the irrigated portion thereof and thirty-three and one-third percent (33 1/3%) of the Wheat Crop harvested from the unirrigated portion thereof. For purposes of this Agreement, ASCS payments shall be divided between the parties in the same manner as the Wheat Crop. The crop rent payable hereunder to Jones and Westbrook shall not be considered as property of the Dormans' bankruptcy estates and shall not bear any costs of administration in the Bankruptcy Case. The estate of John C. Dorman and Wilma L. Dorman shall bear all harvest related expenses and shall deliver the harvested Wheat Crop to the nearest commercial elevator free of any expense to Jones and Westbrook.

3. *Surrender of Leased Property.* All Leased Property, whether belonging to Jones, Westbrook, or other members of their families (excluding Mary Nassaman and Carol L. Yates), shall be deemed to have been surrendered effective April 2, 1993. Trustee shall reasonably cooperate with Jones and Westbrook in their efforts to immediately retake possession and relet the

Leased Property. The surrender of the Leased Property shall not effect Trustee' right, as set forth herein, to harvest the Wheat Crop.

4. *Release of Jones and Westbrook.* Trustee, as the representative of the Dormans' bankruptcy estates, hereby forever releases, discharges and acquits Jones and Westbrook, collectively and individually, from any and all manner of actions and causes of action, whether at law or in equity, including all known or potential suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs, and expenses, of every kind and nature, whether known or unknown, suspected or unsuspected, or fixed or contingent, which Trustee now has, or may have, by reason of any matter, cause, or thing arising from or in any way relating to, the Agricultural Lease, the Pasture Lease, or the Leased Property; provided, however, this release shall not release claims arising under this Agreement.

Without limiting the scope of the foregoing release, Trustee hereby specifically releases and forever discharges any and all claims he may hold under the Agricultural Lease and the Pasture Lease, except the claim to the Wheat Crop that is set forth under paragraph 1 hereof.

This release shall not become effective or enforceable until this Agreement has been approved by the bankruptcy court, as provided in paragraph 8.

5. *Release of the Dormans' Bankruptcy Estates.* Jones and Westbrook, collectively and individually, hereby forever release, discharge, and acquit the Dormans' bankruptcy estates from any and all manner of actions and causes of action, whether at law or in equity, including, but not limited to, all known or potential suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs, and expenses, of every kind and nature, whether

known or unknown, suspected or unsuspected, or fixed or contingent, which Jones and Westbrook now have, or may have, by reason of any matter, cause, or thing arising from or in any way relating to the Agricultural Lease, the Pasture Lease, or the Leased Property; provided, however, this release shall not release claims arising under this Agreement and shall not release any claims accruing after the date hereof.

This release shall not become effective or enforceable until this Agreement has been approved in its entirety by the bankruptcy court, as provided in paragraph 8.

6. *Other Claims.* This Agreement is intended to pertain only to claims arising from or relating to the Agricultural Lease, the Pasture Lease, the Wheat Crop, and the Leased Property. Accordingly, this Agreement shall not effect other claims Jones and Westbrook, collectively, or Jones, individually, may hold against the Dormans, as individuals. It is specifically agreed that claims against the Dormans, as individuals, do not constitute claims against the bankruptcy estate. Further, it is specifically agreed that this Agreement shall not effect the purchase agreement entered into on the 1st day of August, 1992 between Jones and the Dormans.

7. *Insurance.* This Agreement shall not bar or limit Jones and Westbrook from presenting claims under Federal Crop Insurance on the Wheat Crop.

8. *Bankruptcy Court Approval.* The compromise of controversy set forth in this Agreement is expressly conditioned upon, and subject to, approval by the bankruptcy court presiding over the Dormans' Bankruptcy Case. Such approval shall include bankruptcy court findings that the Leased Property, Wheat Crop, and ASCS payments referred to above are not property of the Dormans separate and apart from their bankruptcy estates. If this Agreement is not approved

in its entirety by the bankruptcy court, this Agreement shall be null and void and of no further force or effect. Upon the parties execution of this Agreement, Trustee shall take the actions necessary to obtain bankruptcy court approval of this Agreement. The parties shall use their best efforts to obtain such approval.

9. *Appeal.* Should any appeal be taken from the bankruptcy court order approving this Agreement, Trustee shall defend the appeal as necessary and appropriate and bear his costs and expenses in connection with such defense.

10. *No Admission of Liability.* This Agreement resolves disputed claims between the parties and is being made to avoid the substantial costs, expenses, and uncertainties associated with a judicial resolution of such claims. Neither the execution nor performance of any of the terms of this Agreement shall constitute or be construed as an admission of any liability or any fact.

11. *Waiver.* No breach of any provision hereof can be waived unless done in writing. Waiver of any one breach shall not be deemed a waiver of any other breach or any other provision hereof. This Agreement may be amended only by a written agreement executed by all parties.

12. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

13. *Entire Agreement.* No promises, inducements, or representations not expressly set forth herein have been made to any of the parties or any of their representatives. This Agreement constitutes the final and entire agreement between the parties. This Agreement shall supersede all prior negotiations and agreements, whether written or oral, that pertained in any

way to the subject matter hereof. The terms of this Agreement are contractual in nature and not mere recitals.

14. *Choice of Law.* This Agreement shall be construed under, and interpreted in accordance with, the laws of the State of Oklahoma.

15. *Use of Headings.* All headings in this Agreement are used solely for the convenience of the parties and are not to be interpreted as part of this Agreement.

16. *Successors.* This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties and their respective successors, administrators, trustees, and assigns.

17. *Authority.* The parties declare, warrant, and represent that they have agreed to the terms of this Agreement and that they have all requisite authority to enter into this Agreement.

18. *Binding Effect.* The terms of this Agreement shall be binding upon all parties in interest to the Bankruptcy Case.

19. *Time.* Time is of the essence under this Agreement.

20. *Pre-Settlement Costs & Fees.* The parties shall bear their own costs and attorney's fees through the date of this Agreement.

21. *Further Documents.* The parties agree to execute such other and further instruments as may be reasonably necessary to carry into effect the intent of this Agreement.

22. *Modifications.* No modifications to this Agreement shall be effective unless made in a signed writing.

23. *No Admission.* Nothing contained herein shall be construed as an admission of liability by any party

hereto, such liability being expressly denied by each and every party to this Agreement.

Executed the day, month and year first written above.

/s/ Jack Cornelius
JACK CORNELIUS, as trustee of
the bankruptcy estates of John C.
Dorman and Wilma L. Dorman

PAULINE JONES

ANN ELL WESTBROOK

518.01/A1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:)
)
JOHN C. DORMAN) Case No. 92-16654 LN
d/b/a DORMAN FARMS) Chapter 11
and) Filed March 25, 1993
WILMA DORMAN,)

Debtors.

AMENDED MAILING MATRIX

Jack Cornelius, trustee of this Chapter 11 case submits the attached amendment to the mailing matrix to include the creditors of Lonetree, Inc.

/s/ John R. Hughey
John R. Hughey, OBA #4470
HASWELL JONES HUGHEY
VAUGHN & THOMAS
2800 Liberty Tower
100 N. Broadway
Oklahoma City, OK 73102
(405) 235-7511
ATTORNEYS FOR JACK
CORNELIUS, TRUSTEE

CETIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amendment to Mailing Matrix and the attachment thereto was mailed, via first class mail, postage prepaid to all persons on the mailing matrix herein and to all persons who have entered an appearance in this case on the 25th of March, 1993.

/s/ John R. Hughey
John R. Hughey

AMENDED MATRIX

John C. and Wilma Dorman
Route 1, Box 89
Forgan, OK 73938

John R. Hughey, Esq.
Attorney for Jack Cornelius, Trustee
2800 Liberty Tower
Oklahoma City, OK 73102

John C. Dorman, Service Agent
Lonetree, Inc.
Route 1, Box 89
Forgan, OK 73938

Roy E. Lyles
P.O. Box 254
Red River, NM 87558

Cessna Finance Corp.
P.O. Box 1201
Wichita, KS 67201

Supreme Court, U.S.
FILED
OCT 10 1995
CLERK

No. 95-307

In The

SUPREME COURT OF THE UNITED STATES
October Term, 1995

John C. Dorman and
Wilma L. Dorman,
Petitioners,
v.

Pauline Jones and
Ann Ell Westbrook, ET AL,
JOHN DOE(S) 1-50
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITIONER'S REPLY BRIEF

John C. Dorman
Wilma L. Dorman
Route 1, Box 89
Forgan, OK 73938
405-259-6488

BEST AVAILABLE COPY

PUBLISHER'S NOTE:

Page(s) 1 missing in original.

QUESTIONS PRESENTED

Contrary to the respondents statement that the only question which should come before this court is the mootness question; by law, due to the fact that the lessors' "Surrender Order" was obtained in violation of debtors' automatic stay, is void *ab inito* pursuant to U.S. C. 362.

And once the lessors' judgment became void *ab initio* by virtue of the violation of the automatic stay, it was as if the entire proceeding had never occurred. Consequently, the Supreme Court should move to vacate the February 24, 1993, judgment and the subsequent May 26, 1993 void *ab inito* orders which were the direct result of the subject, void from the beginning, "Surrender Order" order.

Pursuant to 11 U.S.C. 362 (a) (3) the filing of a Chapter 11 petition invokes an automatic stay against all creditors from performing any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. The purpose of this provision is to prevent dismemberment of the estate.

The lessors, Pauline Jones and Ann Ell Westbrook did not file a Motion or move the bankruptcy judge to grant them relief from the automatic stay, and under Bankruptcy Rule 2395, unless bankruptcy court grants relief from automatic stay, all judicial actions and proceedings against debtor initiated while stay is in effect are void *ab initio* = void from the beginning. As such, the judgment was void from the beginning and carries no legal force or effect now, and cannot be cured.

The law is clear that judgments entered during pendency of a bankruptcy proceeding without relief from the stay are void ab initio. As set forth in the language of Section 362 of the bankruptcy code, the automatic stay is "applicable to all entities", including state and federal courts. The code is applicable to the lessors as an entity and if the state and federal courts are subject to the code then the lessors should be held accountable too.

And a simple review of the dates involved in the instant matter supports a finding that the automatic stay was violated. As such the order was void from the beginning and carries no legal force or effect now. And an appeal from such orders would not be moot.

And the Supreme Court has the right to overturn the subject "Surrender Order" and the lessors cannot avoid the consequences of violating the automatic stay. AND THE COURT HAS THE POWER TO ENTERTAIN AN INDEPENDENT ACTION OR TO SET ASIDE A JUDGMENT FOR FRAUD UPON THE COURT, OR ORDERS WHICH ARE VOID *AB INITO.*

And the issues are not moot because the lessors′ surrender order is void from the beginning due to the lessors violating the debtors automatic stay.

Petitioners, John C. Dorman and Wilma L. Dorman request that a writ of certiorari be granted because the lower bankruptcy court has departed from the accepted and usual course of judicial proceedings as the petitioners have proved from their pleadings and from the attached orders and transcripts of the lower bankruptcy court and judge Paul B. Lindsey said that he was not going to change his ruling and that someone would have to tell him that he was wrong. And he won't listen to the Dormans and neither has the District court or the Tenth Circuit court of appeals. Therefore the district court and the appellant court have sanctioned such a departure and have not afforded any relief to petitioners grievances. And such a departure calls for an exercise of this court's power of review and supervision.

Petitioners contend that all the question presented by the Dormans in their petition for Certiorari are still valid questions and should be answered, and are relevant for justice to be done and for the Supreme Court to review the lower bankruptcy courts improper void *ab inito* proceedings.

The Dormans were subjected to cruel and unusual punishment and their rights were violated and they have not receive due process of law.

As the petitioners asked in their petition although worded differently, "Should Clearly Erroneous orders and proceedings in the lower bankruptcy court continue in/with full force and effect when in fact they are void *ab inito*, thereby deemed to have no force or effect?

In the submitted transcript of February 23, 1993, Judge Lindsey and the trustee Jack Cornelius determined that if the subject lease was surrendered to the landlord's that the farm would no longer cash flow and would have to be remanded to a liquidation plan. 11 USC 1112 (c) prohibits the court from converting a case concerning a farmer to a liquidation case unless the debtor consents. Was the Dorman family farmers' rights violated when the court sanctioned and confirmed a liquidation plan over the debtors' objections and without their consent? And when the Federal Income tax return was filed as a Chapter 7 liquidation?

When the controlling lender's attorney in the submitted transcript of February 26, 1993, states that the trustee has proposed a liquidation plan. As the petitioners' questioned in their petition for Writ of Certiorari, "Wouldn't this "taking" constitute cruel and unusual punishment under the eighth amendment? And violate debtors's Fifth amendment rights?

PARTIES TO PROCEEDING BELOW

The appeal was filed in the bankruptcy court March 5, 1993, before the subject leases were relet to Jake Slatten, Jeff Slatten and Jack Slatten and Earl Semmel and all other parties were served both in the District Court and the Tenth Circuit Court of Appeals. None of the parties but Jones and Westbrook responded; the others are all in default, their time to respond or object has expired. Since they did not respond or object in the Tenth Circuit Court of Appeals, why should they be served on the Writ of Certiorari to the Supreme Court?

Plus Jones and Westbrook inserted ET AL as respondents. ET AL = all others, in the Black's Law Dictionary. These others are the third parties that Jones and Westbrook relet the Dorman Partnership leased lands to: Jake, Jeff and Jake Slatten and Earl Semmel, and Gene Sharp, counsel for the lessors. Sharp has been in extreme conflict of interest and immoral and unethical law practice.

1. He is related to both the respondents and the petitioners.
2. He has counseled both parties as an advisor and attorney.
3. He has been a lessor of the Dormans' son, John Mark Dorman and
4. John C. Dorman's brother, Richard H. Dorman.
5. And, Gene Sharp's mother was a lessor to John C. Dorman.

6. Plus he desired to be Jones and Westbrook's farm/business manager; and he has been ram roding, managing, controlling and determined who would receive the relet land leases.

7. Charles Underwood, petitioners' former attorney testified in open court that, "... at that time we were negotiating with, I believe, it's a Mr. Sharp, out of Liberal, Kansas on these leases. And I believe we didn't feel that there was a problem at that time. And it wasn't until after the fact, I think it was Mr. Steve Elliott got involved, and they decided they were going to reject the leases. Q. You mean, the owners of the land. A. Mr. Sharp represented to the owners of the land, Your Honor. He's an attorney out of Liberal.Gene Sharp had agreed to the reaffirmation of the leases

The Dormans have been mailing the attorney general of the State of Oklahoma and the Attorney General of the United States copies of their documents as they represent the justice system and they should be interested in seeing that justice is done. Also, they were on the mailing matrix of the bankruptcy court. And the Attorney General, John Green filed his appearance in the court and the judges were served because they were named in the briefs along with their "clearly erroneous" orders and ruling which violated the Debtors rights under the Constitution and due process.

Judge Lindsey knew that he had been spending all his time in Florida and knew that the court proceedings had not been conducted properly; he dumped the case because it could not be cured, after he admitted to the Dormans that he might have made a mistake - he recused himself. And Judge Covey enjoined the Dormans and their sons under a permanent injunction, which violated due process.

JURISDICTION

158 (d) 1334 (b)

28 U.S.C. 1651 (a) - Unconstitutional discrimination against Chapter 11 Reorganization petitioners.

28 U.S.C. 2403 (a)
Wilma Dorman, her two sons, and two grandsons are American Indians of the Cherokee tribe and utmost good faith has not always been observed toward them. Their land and property has been taken from them without their consent; and their property, rights and liberty has been invaded and disturbed and there was not just or lawful war authorized by Congress. And laws founded in justice and humanity should be made for preventing wrongs being done to them.

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TABLE OF AUTHORITIES

Cappadonna v The Howard Sav. Bank, N/K/A First Fidelity Bank, N.A. (Cite 154 B. R. Bkrtcy D. N. J. 1993)

In re Saybrook Mfg Co., 963 F2d 1490 (CA11 1992
In re Blumer, 15 BCD 244, 66 BR 109, 16CBC2d 409 (CA9 BAP 1986 (364 (c))

CONSTITUTIONAL PROVISIONS

Same as presented in Petition of Writ of Certiorari.

STATUTES

11 U.S.C. 362
365 4
60 (b)
7052

OVERTURNING THE COURT'S FINDINGS
752.2 CLEARLY ERRONEOUS RULE
CIVIL RULE 52 (a)
RULE 810

REVERSAL IS NOT LIMITED TO RESULTS THAT ARE "CLEARLY ERRONEOUS" AND THAT IS ENOUGH THAT APPELLATE COURT SHOULD BE CONVINCED THAT THE RESULT DOES NOT JIBE WITH THE APPLICABLE RULE OF LAW. (See 9 Am Jur 2d BK 103, 107, 728, 1683, 1684.

Rule 924.2 Relief from judgment or orders on grounds such as mistake, inadvertence, excusable neglect, newly discovered evidence or fraud.

Rule 505.3 Nepotism, influence, and interest disqualification - Appearance of influence. Any judge should disqualify himself if in his acting there would be appearances or actions to justify the impression that any person can improperly influence him or unduly enjoy his favors, or that is affected by the rank, position, or influence of any party or other persons.

The advisory committee note cites. B. J. M. Realty Corp. v. Ruggieri (CA2 NY) 338 F2d 653, and B. J. M. Realty Corp v. Rugieri (CA 2 NY) 326 F2d 281, holding that a lessor waived his option to terminate a lease by accepting rental payments for four months following the filing of a Chapter XI petition by the lessee, so that the lease could thereafter be affirmed.

11.54.2 (b) Also recognizes a difference between Chapter XI and bankruptcy cases. In bankruptcy the property will be sold; in Chapter XI case a sale, other than in the ordinary course of business, would be exceptional.

Civil Rule 65 (c) states, in part, that no restraining order or preliminary injunction shall issue except upon the giving of security by the application, in such sum as the court deems proper, for the payment of such cost and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Rule 801 states that the mere allowance of fees is appealable if the power of the court to assess costs, in the first instance is challenged. Re Eastern Erectors, Inc. (DC Pa) 396 F Supp 797.

In re Saybrook Mfg Co., 963 F2d 1490 (CA11 1992 (cross-collateralization is not authorized under 364. It is "directly contrary to the fundamental priority scheme of the Bankruptcy Code." (364(c))

Therefore numerous judgments are void including the order confirming the trustee's liquidation plan and the subsequent sale of lands and property which the First National Bank, Hooker, Oklahoma claimed cross-collateralization. The bankruptcy judge did not have authority to confirm orders which were "directly contrary to the fundamental priority scheme of the Bankruptcy Code." (364(c).

365 4(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties,

UNDER BANKRUPTCY 2395
Unless bankruptcy court grants relief from automatic stay, all judicial actions and proceedings against debtor initiated while stay is in effect are void ab initio. Bankr. Code 11 U.S.C.A. 362.

No. 95-307

In The

SUPREME COURT OF THE UNITED STATES

October term, 1995

John C. Dorman and
Wilma L. Dorman
Petitioners
v
Pauline Jones and
Ann Ell Westbrook, ET AL,
Respondents

BRIEF IN REPLY
No. 95-307

COMES NOW the petitioners, John C. Dorman and Wilma L. Dorman, and submit their brief in reply to the opposition to the Dormans' Petition for a Writ of *Certiorari.*

MATERIAL FACTS

The vacating and "surrender Order" obtained by the lessors, Pauline Jones and Ann Ell Westbrook after the petition of relief was filed under Chapter 11 for Reorganization was void ab initio as obtained in violation of stay. As this matter goes to issues involving property of the estate and the automatic stay, it is a core proceeding as defined by

Congress in 28 U.S.C. Sec 157 *et seq.* The opinion constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

In all the respondents briefs and their statutes, they have not listed Bankruptcy Code 362 because they did not file a motion for the bankruptcy court to lift the automatic stay; therefore the lessors violated the debtors automatic stay. And due to the "Surrender Order" being obtained during the pendency of the debtors' initial bankruptcy proceeding, it was obtained in violation of the automatic stay and is therefore *void ab initio.*

Pursuant to 11 U.S.C. 362, the filing of a chapter 11 bankruptcy petition invokes an automatic stay against all creditors from performing any acts to create, perfect, or enforce any lien against property of the estate and property of the debtor. The purpose of the automatic stay is to give the debtor a breathing spell from his creditors and stop among other things, all collection efforts, harassment and foreclosure actions. 11 U.S.C. 362 thus enables the debtor to attempt a repayment or reorganization plan or simply to be relieved of the pressures that drove the debtor into bankruptcy.

362 (a) (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the

estate. The purpose of this provision is to prevent dismemberment of the estate.

The Third Circuit has recognized that the effect of the automatic stay provision of the bankruptcy code is to "suspend any nonbankruptcy court's authority to continue judicial proceedings then pending against the debtor". As set forth in the language of section 362 of the bankruptcy code, the automatic stay is "applicable to all entities', including state and federal courts. *Id.* Appropriately, unless the bankruptcy court grants relief from the stay, all judicial actions and proceedings against the debtor initiated while the stay is in effect are void *ab initio. Id. See also, Kalb r. feurstein 308 U.S. 433, 438-39, 60 S.Ct. 343, 346, 84 LEd. 370 (1940).*

And a simple review of the dates involved in the instant matter supports a finding that the automatic stay was violated. As such the order was void from the beginning and carries no legal force or effect now.

"Ab initio" is from the Latin meaning "[f]rom the beginning." Black's Law Dictionary. 5th Ed. (1979). Accordingly, once the "Surrender Order" judgment became void *ab initio* by virtue of the violation of the automatic stay, it was as if the entire proceeding had never occurred. Consequently, the Supreme Court should investigate the lower courts, most especially the bankruptcy court because the court allowed the adverse controlling lender to violate debtors automatic stay also. The Supreme Court should vacate and reverse subsequent orders; most especially the order confirming the trustee's liquidation plan. The court would be found lax to find differently. To hold otherwise would result in the unwanted effect of rewarding creditors and lessors for violation of the automatic stay. Should the court allow a creditor or lessor who knowingly obtains a judgment in violation of the automatic stay, to ratify that judgment, what would stop all creditors and lessors from proceeding to judgement in violation of the stay? This would certainly defeat the purpose of the automatic stay, which is to afford protection to debtors and enable them to focus attention on their bankruptcy proceeding. Thus the court cannot allow actions of creditors to erode the purpose and intent behind the provisions of the automatic stay. (Debtors' briefs in the Tenth Circuit Court asserted the violation of their automatic stay by the lessors and the adverse lender; it was ignored.)

362 (h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

If the violation of the automatic stay was not enough; the "Surrender

Order" was also void *ab initio* due to the bankruptcy court's own local rule 12(h)(4), if an order is not submitted and filed within twenty days of the expiration of the response period, the motion will be stricken.

Assuming the response time on the Motion had expired, as represented in the Order and the Order was submitted well outside the time period specified in Local Bankruptcy Rule 12(h)(4). In fact, the Order was submitted only after counsel for the Debtors was told on or about February 4, 1993 by the lessors' attorney Stephen Elliott that no order thereon had ever been entered. The Order, which counsel for the Movants assert was never served had only came to their attention through an offhand comment by counsel for the Trustee, was therefore submitted and entered on a motion that was either deemed to have been stricken or that should have been stricken. If the Order should have been stricken; it should have been stricken on December 8, 1992, when the Motion for Extension was assumed to have been untimely filed by one day. Else the Motion should have been stricken when the order had not been submitted and filed within the twenty days of expiration of the response period.

Court clerk and court neglected to deny the filing of the untimely Motion to Extend, and the judge omitted through inadvertence or mistake to Strike the Motion when an order was not presented according to the court's own local rules. Twenty days would have been stricken on December 28, 1992. (Assuming the judge was correct in vacating his Extension Order and in further ordering the "Surrender Order"; then the order should have been confirmed nunc pro tunc, retroactively to either December 8, 1992 or December 28, 1992; rather than February 23, 1993.)

If the bankruptcy court had ordered the motion stricken at the proper time and performed its legal obligation in a timely manner, as it should have and even if he had deemed the leases rejected by default or by law and ordered the surrender of the leased land; the "Surrender Order" would have instructed the debtors in possession, not a trustee, to surrender the land.

There would not have been the court approved, unauthorized "agreed to" order appointing Jack Cornelius as trustee and he would not have filed the liquidation plan and liquidated the farm and ranch, the trust, 1300 acres of minerals, Lonetree, Inc., sons' property and personal exempt property of the Dormans and all of the other assets. No liquidation plan would have been filed.

During this time period the petitioners were debtors in possession and their Disclosure Statement with attached Reorganization Plan was filed on December 21, 1992.

Bankruptcy judge Paul B. Lindsey also signed two subsequent void ab initio orders on May 26, 1993. The first one was the trustee's Compromise Agreement which stipulated that the judge had to approve the compromise in its entirety before the lessors would withdraw their objection to the trustee's Liquidation Plan. The judge would not confirm the liquidation plan without the lessors withdrawing their objection; he agreed to approve the compromise agreement if the lessors would withdraw their objection to the liquidation plan; the lessors' attorney, Stephen Elliott verbally agreed to withdraw the lessors objection; without notice or a hearing and judge Paul B. Lindsey confirmed the trustee's Liquidation Plan over the objections of the debtors, John C. Dorman and Wilma L. Dorman. Thus the second void *ab inito* order was the Confirmation Order for the trustee's Liquidation Plan.

And pursuant to 365 4 (c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment or rights or delegation of duties,...yet, the trustee violated this ruling by assuming the leases until April 2, 1993 and by his agreeing to assign leases by helping lessors to relet the leases. His "Clearly Erroneous" "Void *ab inito*" court approved "Compromise Settlement Agreement" with the lessors states within the compromise agreement that the leases will be deemed released to lessors on April 2, 1993, when the court approved "Surrender Order" ordered the trustee to "immediately" surrender the land to the lessors; dated and filed February 24, 1993. The void *ab inito* Compromise or Settlement agreement order also violated 365 4 (c) by stating that the trustee would also help the lessors in releting the land to others.

In Trustee's Compromise Agreement with the lessors, the trustee states that the land would be surrendered April 2, 1993, almost two months after the court has ordered the "immediate" surrender of the land.

The Dormans filed an adversary suit No. 93-01141 filed April, 1993. The debtors claimed the wheat crop, ASCS payments and malpractice suit against former attorneys. Hearing was set for declaratory judgment on June 16, 1993. The settlement agreement had a specific clause in which lessors demanded that the crops, ASCS payments etc did not belong to the Dormans; that if the court did not approve the settlement agreement in full that the lessors would object to the trustee's liquidation plan. The lessors filed an objection to the plan and Stephen Elliott verbally withdrew the objection the day of the trustee's confirmation hearing on his liquidation plan. This was improper, misconduct, illegal and fraud upon the court, and the judge signed a prejudgment order. The Dormans did not appeal the settlement agreement because they did not know if it in time; but did appeal the adversary order which Judge Covey rubber stamped the later part of June, 1993, after Judge Lindsey recused himself. Judge Covey did not even know it was an adversary suit or that he had signed it without a proper hearing. Appendix I

There have been far too many mistakes, misconduct and improper court proceedings and clearly erroneous orders and unauthorized "agreed to" court approved orders in the bankruptcy court to simply dismiss the petitioners' certiorari when Rule 60 (b) states: Relief by motion from judgment or order are entirely appropriate in bankruptcy cases. And the motion was filed in the Tenth Circuit court of appeals with brief and brief in support; dismissed and appealed to the Supreme court in petitioners' Writ of Certiorari.

The Motion was entitled, "MOTION FOR REDRESS OF GRIEVANCE WITH REQUEST FOR WRIT OF ERROR AND WRIT OF SUPERVISORY CONTROL AND BRIEF IN SUPPORT OF APPEAL AND MOTION FOR REDRESS OF GRIEVANCES".

The docket sheet, documents filed in the courts, orders of record and transcripts which the Dormans have submitted: dated February 3, 1993, February 24, 1993, and February 26, 1993 substantiate the Dormans claims.

Everyone acted to cover up his misconduct and helped to cover up the court's inaction and misconduct.

No one sought an extension of time beyond the twenty days because the plan would have been confirmed on February 26, 1993.

The lessors state that the only reason they had not opposed the untimely Motion to Extend was because they had never been served. Both Jones and their attorney of record Lynn Pringle of Pringle and Pringle had been served, although lessors are not considered creditors and are not required to be served unless lease is in default - they were not in default - current ten year leases.

Stephen Elliott, lessors counsel of record in the Supreme Court never filed his appearance in the bankruptcy court neither did he pay his filing fee. John Hughey, attorney for the trustee did not pay his filing fee or file his appearance in the bankruptcy case. What are they doing stating that they are counsel of record when they haven't even filed their appearance in the bankruptcy court or paid their filing fees? What are they doing practicing law and filing documents when they haven't even filed?

Just as the bankruptcy court should have denied the filing of an untimely motion, the lessors attorneys should have known it was untimely and should have known an order had not been entered. All attorneys are charged with knowledge of the law as are the judges. The only ones with an excusable excuse are the Dormans because they trusted the court, the court officers and they later warned the judge and all the attorneys by caveat, constructive notice and judicial notice that they would be held accountable if they did not protect the rights of the Dormans - if they allowed the Dormans' Constitutional rights to be violated.

Judge Lindsey granted an ex parte application and order which also shortened the time to respond to 5 days and granted the hearing by ex parte order.

See respondents' Supreme Court Appendix on Page 11, statements as follows:

1. A Confirmation hearing on debtors plan of Reorganization is set for March 26, 1993 at 9:00 a.m.

WRONG! The date should read February 26, 1993. And the last paragraph, once again has represented the wrong date; March 26, 1993, rather than February 26, 1993. Also in the motion, Judge Lindsey marked through the 26th and shortened it two more days, changing the requested date on the motion to the 23rd of February - two days before the date set for the hearing for debtors plan of confirmation.

Lessors counsel states that debtors counsel did not complain of shortened time to respond and hearing - he did complain in the transcript. He also complained about Judge Lindsey's absences due to his numerous absences running circuit to Florida.

Judge Lindsey complained about the Discovery Statement not being submitted earlier. It had been submitted twice before, each time the adverse controlling lender, the First National Bank, Hooker, Ok would object. The bank objected for everyone, including the unsecured creditors. The bank violated the automatic stay any number of times.

1. The Dormans Disclosure statement is filed December 21, 1992; on the very day that the bank had reduced the debtors' exclusive time to. The time had been reduced from 120/80 days and from 180/140;

2. On January 14, 15 days after the Disclosure Statement has been filed and no objections have been filed, debtors' attorneys file an Application to shorten time for hearing on Debtors' Disclosure Statement and for filing objections to same. (The time for objecting was almost up.)

3. On January 15, 1993, First Amended Disclosure Statement is filed.

4. On January 15, 1993, Notice of Hearing scheduled for 9:30 2/3/93. (The judge should have scheduled a hearing 25 days after it was first filed; Twenty-five days from December 21 would be

January 5, 1993. A good month before it was scheduled. How many times is the debtor required, by law, to have unauthorized agreed agreements and orders between debtors' attorney and the controlling lender forced upon them, before the filed Discovery Statement is approved? (Harassment of adverse controlling lender.)

5. The Discovery Statement was approved at the hearing on 2-3-93, and the three objections were agreed to - whatever they were, without debtor in possessions authorized agreement. (Of course of the objectors was The First National Bank of Hooker.

6. Jack Cornelius is approved as trustee through an "agreed to Order" between Kirk and Bickford.

Debtors have just recently learned that these two made agreements starting with the cash collateral loan in November, 1992, when debtors' exclusive time was reduced by agreed to order which they did not authorize, neither did they agree to debtors' attorney placing the borrowed cash in their own trust account. These two agreed between themselves about: a. the use of cash collateral which bank was overcollateralized, and FNB asserted its first claim of cross-collateralization. b. Debtors' exclusive time reduced from 120/80; 180/140 and the appoint of Jack Cornelius as trustee. (All of this was done by the bank to control the debtors and the estate and to obtain debtors' exclusive rights, thereby violating the stay and making all these court approved "agreed to" orders void ab *inito, and nunc pro tunc.)*

6. The scheduled court hearing for Discovery Statement and Debtors Reorganization Plan's filed was set for February 26, 1993.

7. February 23, 1993, Judge Lindsey's Extension order vacated and trustee ordered to immediately surrender the land.

8. February 24, 1993, Order filed striking hearing for Confirmation Hearing set for February 26, 1993.

9. John Hughey, trustee's attorney and Mike Bickford are granted an ex parte order for emergency loan, they assure judge Lindsey that they have notified everyone by fax. Debtors were not noticed, plus meeting was held on date when debtors' plan was to have been confirmed. Bickford states that FNB is not concerned about the lien because the trustee has proposed a plan of liquidation. (This only two days after the "Surrender Order".

The agreed to order which Paul B. Lindsey approved on February 26, 1993, is void due to the fact that all parties were not notified even though attorney for both the trustee and the bank assure the judge that everyone had been notified. There had not been time; the leases had only been ordered surrendered on the 23rd and the judge granted the trustee the loan on February 26, 1993.

Procedural due process requires individualized notice be given to secured and unsecured creditors prior to granting order approving loan; order obtained without notice is void. In re Blumer, 15 BCD 244, 66 BR 109, 16 CBC2d 409 (CA9 BAP 1986 (364 (c))

1. The Judge rendered a prejudgment order.

2. Trustee overreached his authority in claiming right to property of debtors which had been deemed rejected by bankruptcy court - if rejected from estate - trustee cannot reclaim debtors' rights.

3. Lessors had not filed claim for damages or default of leases.

4. Lessors owed Dorman Partnership for expenses incurred in 1991, due in 1992 for the wheat crops which were harvested in 1992. In excess of $3,000.00. And the Dorman Partnership did lease the Pauline Jone's farm and grass land; she rented 160 from her son and 80 acres from her daughter Ann Ell Westbrook. Jones in turn rented these to The John and Wilma Dorman Partnership; Wilma had to check with tax consultant about tax liability etc and sign specific ASCS government documents before she could receive checks in her name or indemnity checks from the

Federal Crop Insurance for her disaster losses and she received checks in her name through marketing her share of the wheat and milo crops. Even Pauline Jones knew that only John, she and Wilma signed ASCS papers and that they each received a share. Wilma did not receive any funds or crops from the other land that John had leased only in his name. And the partnership had not filed bankruptcy, the partnership had an agreement with John C. Dorman dba Dorman Farms.

The Dormans did raise the lack of notice issue in the lower court and also raised the issue of the lessors violation of the debtors automatic stay, which voids the Surrender Order from the beginning. Unless bankruptcy court grants relief from automatic stay, all judicial actions and proceedings against debtor initiated while stay is in effect are void *ab initio.* Bankr Code 11 U.S.C.A. 362. In re Joseph P. Cappadonna v Howard Sav. Bank, N/K/A First Fidelity Bank, N.A Cite as 154 B.R.639 Bkrtcy D. N. J. 1993)

The Dormans did answer the motion to dismiss because the District Court had notified the lessors that the Motion to Dismiss could not be filed because the Dormans had appealed the "Surrender Order" to the Tenth Circuit Court.

Pursuant to the Bankruptcy code 364 (c) Cross-collateralization is directly contrary to the fundamental priority scheme of the Bankruptcy Code, yet the controlling adverse lender, The First National Bank, Hooker, Oklahoma, claimed cross-collateralization in all their pleading:

1. The bank was not concerned with adequate protection; the bank sought to control both the debtors in possession and the property of the estate, thus violating the automatic stay.

2. The court approved "agreed to order" dated November 4, 1992 between D. Benham Kirk, Jr. and Michael Bickford, authorizing and restricting the use of cash collateral in their possession and control and the adverse lender's attached budget and further agreement of the joint motion filed on November 5, 1992.

3. On November 5, 1992, the docket states that a joint motion by debtor Wilma L. Dorman, debtor John C. Dorman and Creditor The First National Bank of Hooker to reduce debtor's exclusive time to file plan, and to gain acceptance of plan of reorganization. Certificate of mailing by M. Bickford. DEBTORS DID NOT AGREE TO REDUCE THEIR EXCLUSIVE TIME TO FILE A PLAN OF REORGANIZATION. This was a blatant lie, we did not authorize this motion and did not receive notice of it; and the bank violated debtors' automatic stay by endeavoring to acquire the debtors' exclusive time, causing harassment of the debtors and in obtaining a judgment order. This is another void order.

4. The Order of November 5, 1992, granting Motion to file plan by First National Bank of Hooker. ORDERED that debtors' 120-day period to file a plan is reduced December 21, 1992, and the 180-day period within which debtors' may gain acceptances of such plan is reduced to March 1, 1993. It is further ORDERED that agreed reductions shall not be extended without written consent of both debtors and FNB of Hooker.

5. The First National Bank of Hooker violated debtors automatic stay by all their acts in controlling or acquiring debtors in possessions rights, such as debtors exclusive time in which to file a plan, in demanding more than adequate protection of cash collateral, in motion and granted order to examine nondebtor Tom Eike and ordering him to produce all documents and papers that in any manner deal with his work for the debtors, including but not limited to financial projections, working papers, reports submitted to financial institutions and prospective lenders, letter to/from the debtors.

Tom Eike was an FMHA packager. He helps farmers prepare government required documents which the Dormans needed in early 1992 to help the Dormans to qualify for guaranteed government loans. Marc Conley, Sr. Vice President of The First National Bank of Hooker told the Dormans to present the guaranteed loan package elsewhere and although he signed "Yes", on a document which is presented to lenders to see if they would consider making the Dormans a guaranteed loan; he told his bank that the Dormans' plan would not cash flow. He did not want the package presented to him, yet, he used the bankruptcy court to receive all the documents to prepare for their pending foreclosure action against the Dormans.

6. 12-22-92, The First National Bank of Hooker violated the debtors stay by subpoena of nondebtor Lonetree, Inc. and thereby piercing the corporate veil. This was not creditors right since Lonetree, Inc. did not have any of bank's collateral, neither was The First National Bank a creditor of Lonetree, Inc. Violation of debtors' rights by violation of debtors automatic stay.

7. The First national Bank of Hooker did not move the court to lift the debtors' automatic stay before "taking" debtors' rights.

From the first, the debtors' attorneys were in collusion with the bank's attorneys, with the trustee and trustee's attorneys and the lessors' attorney. When the Debtors tried to protect their rights and object to the bankruptcy, Judge Paul B. Lindsey about all these various unauthorized agreements between the attorneys and how they were all in agreement - he looked around and said, "Yes, they were in agreement. That they agreed that we should be liquidated and that liquidation was best for the creditors and for us."

1. Our attorney and bank's attorney agreed to reduce debtors' exclusive time to file plan. Michael Bickford states in the transcript, on page 60, third page up of February 23, 1993, "By agreement on the entry of the order appointing a trustee, my client agreed not to file a competing plan until after March 1st. So it's not because of the statute, it's because of an agreement that we have put off the time for filing a competing plan.

2. Debtors attorney and bank's attorney agreed that debtors' attorney would retain the estate's cash collateral in their trust account - there was later a discrepancy in amount, plus attorney did not receive permission from court to use money from trust account.

3. Bank wanted trustee appointed to take control of property and estate.

4. Lessors attorney inform debtors' attorney that lessors have received telephone death threats.

5. December 8, 1992, debtors attorney files Motion for Extension of time to assume or reject leases - one day out of time; then neglects to present an order for the judge to approve.

6. Court clerk and court neglected to deny the filing of the untimely Motion to Extend, and the judge omitted through inadvertence or mistake to Strike the Motion when an order was not presented

according to the court's own local rules. Twenty days would have been stricken on December 28, 1992. (Assuming the judge was correct in vacating his Extension Order and in further ordering the "Surrender Order"; then the order should have been confirmed nunc pro tunc, retroactively to either December 8, 1992 or December 28, 1992; rather than February 23, 1993.)

7. Debtors' attorneys lied, tricked deceived the Dormans endlessly. Kirk tormented us relentlessly, putting us under tremendous stress, duress, and fear with undue pressure, intimidation. He even had us fighting each other because he had caused so much fear. He questioned us about telephone death threats which the lessors had reported to their bankruptcy attorney; Stephen Elliott. He questioned us about irrigation pipe which we had allegedly run over; he informed us that we would have to prove that we were not incompetent and that we did not grossly mismanage our farm. That we would have to provide from five to seven local farmers, who would testify that we were good farmers; that even if we went to court the judge would appoint a trustee, anyway, and it could be someone that wouldn't work with him and Charles Underwood. Someone that wouldn't get along with them.

Jack had promised to help us get our plan confirmed and Kirk assured Wilma, "He promised not to sell you out." No one would believe what he put us through, in his influencing us to seek help from Jack Cornelius.

He just plain scared Wilma into reluctantly - against her better judgment and will - and even against her husband's warnings not to listen to them. (They even had us fighting each other. John got so upset emotionally and physically that it effected not only his emotional heart, but his physical heart as well. He came under so much duress, stress that he had to back off from the bankruptcy court actions or it would have killed him. (Wilma has thought she was going to have to call the ambulance twice; he was in so much pain.)

Wore down, Wilma agreed to hire Jack Cornelius for $75.00 per hour for no more than two months; then the attorneys would discharge him. Kirk had alarmed the Dormans by telling them that the lessors were trying in every way to get their land back; making all kinds of false accusations and the bank was doing the same. And debtors' attorneys put the Dormans through duress, and unduly pressured them relentless because the debtors attorneys knew that they had not protected the leases as the debtors had explicatedly instructed them to.

8. Debtors attorney and bank's attorney get an approved order appointing a specific trustee, Jack Cornelius. (It couldn't be anyone else - it had to be Jack because he would work with them.)

9. On February 3, 1992, U. S. Trustee's attorney, Mark Troppoli agree to present Judge Lindsey an order naming Jack Cornelius as a disinterested person - for the record. This order is filed February 4, 1992

10. Before Jack Cornelius is appointed as trustee and before the court approved "agreed to" order is filed; an application for order by Jack Cornelius to Employ John R. Hughey and Karla Finnell as attorneys to assist trustee is filed. Untimely?

Even before the Dormans had filed their petition for relief, Charles Underwood had been bringing up two people at various times: Jack Cornelius and Stephen Elliott so the Dormans knew of them and knew their names well before ever meeting them.

Could it really be a coincidence that these very two would end up in the same case? That Elliott would end up being the Dormans' landlords attorney and that Charles Underwood would work things out so that Cornelius would be the trustee and that the trustee's attorney, John Hughey would be the one to inform Elliott that the motion to Extend was not timely and that the Debtors' attorney had not presented an order to the court.

Elliott states that he is the one that informs debtors' attorney that an order has not been granted - that he knew about it since early January and had kept silent until Cornelius was appointed as trustee; he then proceeded to get the leases rejected.

Debtors' and bank' attorneys get Cornelius appointed as trustee on February 4, then, on February 5, debtors' attorney files a second Motion to Extend; Then on February 8, debtors' attorney is granted an order that stands out like a sore thumb.

This order was used as the focal point to use the court system to liquidate the Dormans. Everything was in place. The trustee was appointed to have control of all the assets, the trustee and his attorney, John Hughey would not bring a litigation against the debtors attorney, and they would make sure that the Dormans would not be able to, by trustee claiming the lawsuit for the estate, if it came to that. By the time lawsuit would be abandoned to the Dormans they won't have enough money to hire a monkey. And like Hughey said lawyers are reluctant to sue another lawyer.

Now then, on February 16, Elliott runs to Judge Paul B. Lindsey's chambers with an application requesting a prohibited an ex parte order shortening the response time to his motion to vacate order extending time to assume or reject leases and Motion for order compelling immediate surrender of property and that the court would set the hearing for February 26 to at the same time as the hearing on confirmation of the Debtors' plan of reorganization.

Judge Paul B. Lindsey marked through the 26th date and inserted 23 on Elliott's application, then he granted an ex parte order which shortened the response time to 5 days from the date hereof and set the motions to Vacate and Motion compelling Immediate surrender of property for the 23rd day of February.

The Motion demanding the judge to vacate his February 8 Extension Order because the original motion filed December 8, was not filed timely - it was filed one day late; therefore the leases were deemed rejected. He further demanded an order compelling the trustee to immediately surrender the property (1700 acres of farm and grass land), claiming that he had not received a certification of service by the debtors' attorney, therefore he had not objected earlier. But, he states, the bank's attorney had been keeping him informed.

As Elliott brought up in a later pleading, the debtors' attorneys did not object or protest, very much, to the ex parte order or to the shortened 5 day response time and both the trustee's attorney. Neither did he protest or object to Elliot's allegation that the Extension Motion was filed one day late. In fact, he talked like it was; that he did not like it - that the Judge did not like it. He laid it at his door and at the door of his office; he pleaded with the judge not to penalize the debtors; that if the judge was angry to penalize him. He apologized in court to the judge.

Judge Paul B. Lindsey states how the Court probably should have noticed it and inquired about it; in other words he does not consider what he signs - he rubber stamps them. In our case he was gone three times that we know of - two weeks at a time; circuit riding

Judge Paul B. Lindsey based his opinion on BRAYSHAW citing 4003B and 9006, although as he states it is not controlling. This is the second time because he quoted it another time in one of the debtors' other hearings)

Hughey states that in all of the three pleading that none of them could say what the law was and that; Kirk informs the judge that is a jurisdictional question of law and Hughey states how he found one cite in Utah that has a footnote that recognized waiver and estoppel. He brings up Conrad Duberstein and how he states that 365 (d) 4 is put in the code to benefit the lessors and that they can waive it and that such rigid construction of the law brings in the common law principles of waiver and estoppel. Bad cases make bad law.

The U. S. Trustee's attorney just a party in interest.

Cornelius states how central the leases are to the reorganization plan that without the leases it would not cash flow and would have to be remanded to a...Judge Paul B. Lindsey interrupts him and adds, "Liquidation." And Cornelius changes what he was going to say to finish, "...to a liquidation plan, yes, sir.

CONCLUSION

Respondents state that events occurred while appeal was pending that made relief unavailable, that the only question before the court is the moot question.

Petitioners contend that events occurred below which were orchestrated to obstruct justice and to hinder the rehabilitation of the Chapter 11 reorganization plan. That there have been so many illegal, unlawful, clearly erroneous court approved unauthorized agreed to orders and violations of the debtors automatic stay and the violation of their Constitutional rights and due process, that there is no way that the Supreme court can determine that this writ of Certiorari should be dismissed. The issues are not moot, and the Dorman's petition is not frivolous.

We rest our case on the attached transcripts and on the attached cite as authority that all judicial actions and proceedings against debtors initiated while stay is in effect are void *ab* *initio.* Bankr Code 11 U.S.C.A. 362. In re Joseph P. Cappadonna v Howard Sav. Bank, N/K/A First Fidelity Bank, N.A Cite as 154 B.R.639 Bkrtcy D. N. J. 1993).

Unless bankruptcy court grants relief from automatic stay, all judicial actions and proceedings against debtor initiated while stay is in effect are void ab initio. Bankr. Code 11 U.S.C.A. 362.

The vacating and "surrender Order" obtained by the lessors, Pauline Jones and Ann Ell Westbrook after the filing petition of relief under Chapter 11 for Reorganization was void ab initio as obtained in violation of stay. As this matter goes to issues involving property of the estate and the automatic stay, it is a core proceeding as defined by Congress in 28 U.S.C. Sec 157 *et seq.* The within opinion constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

If the violation of the automatic stay was not enough; the "Surrender Order" was also void *ab initio* due to the bankruptcy court's own local rule 12(h)(4), if an order is not submitted and filed within twenty days of the expiration of the response period, the motion will be stricken.

Affirmance of the District court a departure by the Tenth Circuit from the accepted and usual course of judicial proceedings, and did sanction such a departure by the lower court and does implicate special and important reasons for granting review. The Dormans' Petition for a Writ of *Certiorari* should be granted.

The Dormans further demand the reversal of subsequent orders, most especially the order confirming the trustee's liquidation plan which was filed May 26, 1993. and that all property be returned to rightful owners, including all lands, sons' estate, minerals, proceeds from sale of cattle (to date), machinery and equipment, and the assets of the nondebtor de jure Oklahoma corporation, Lonetree, Inc., proceeds from sell of cattle (to date), crops (to date), ASCS payments (to date, damages, punitive damages, loss of income, future income, restoration of personal property of nondebtors, restoration of fixtures, heirlooms, Christmas gifts, our credit history and good name.

Respondents request the right to file appropriate lawsuits, and request an extension of time, stay or injunction about pursuing the rights, of the estate, debtors and other injured parties. And respondents demand the court to issue a Writ of Restitution and or a writ of Execution and an award of damages, costs and whatever else the court deems proper, correct and equitable.

Therefore, the Dormans, young and old, pray to their Heavenly Father God, in Jesus's holy name, that the Dormans' Petition for a Writ of Certiorari be granted, otherwise gross miscarriage of justice would occur. And that the Dormans be granted such further relief as the court deems proper, and just, including an award of damages.

Respectfully submitted in Christ Jesus's name.

John C. Dorman

Wilma L. Dorman

John C. Dorman
Wilma L. Dorman
Route 1, Box 89
Forgan, OK 73938
405-259-6488

Petitioners are representing themselves.

APPENDIX

In the United States Bankruptcy Court For
The Western District of Oklahoma

Filed July 14, 1993
In RE:
JOHN C. DORMAN AND) No. BK-92-16654-C
WILMA L. DORMAN,) Chapter 11
Debtors

JOHN DORMAN)
WILMA DORMAN,) ADV. # 93-01141-C
Plaintiffs)
vs.
JACK CORNELIUS,)
TRUSTEE Defendant)

JACK CORNELIUS)
TRUSTEE Plaintiff) ADV # 93-01173-C
)
vs)
)
JOHN C. DORMAN AND)
WILMA DORMAN)
Defendants)

TEMPORARY INJUNCTION

This matter comes on to be heard upon the Court's own motion pursuant to 28 USC Section 1651 (a) and 11 USC Section 105(a) and pursuant to the decision of the Tenth Circuit Court of Appeals in Tripati v. Beaman, 878 F2d 351 (10th Cir. 1989), IT IS ORDERED, ADJUDGED AND DECREED that debtors herein are temporarily enjoined and restrained from filing any pleadings in the above described case or adversary proceedings or from filing any new adversary proceedings related to the above case unless represented by an attorney authorized to practice law in the State of Oklahoma and the United States District Court for the Western District of Oklahoma, or, if acting prose, without first obtaining leave of Court

Dated this 14th day of July, 1993.

/S/Stephen J. Covey
U. S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
FILED: JULY 14, 1993

IN RE;
JOHN C. DORMAN AND)
WILMA L. DORMAN)
Debtors) Case # Bk-92-16654-C
) CHAPTER 11
JOHN AND WILMA)
DORMAN)
) Adv. # 93-01141-C
Plaintiffs)
vs.)
)
JACK CORNELIUS)
TRUSTEE)
Defendant)

JUDGMENT ORDER

This matter comes on to be heard upon the Complaint for Declaratory Judgment determining that certain asses are not property of th bankruptcy estate filed by John and Wilma Dorman, Debtors, against Jack Cornelius, Trustee, and the Motion for Summary Judgment filed by the Trustee, Debtors' Response to the Motion for Summary Judgment, and the Reply of the Trustee to Debtors' Response. The Court having considered all of the pleadings finds as follows.

1. The facts as stated in the Trustee's Motion for Summary Judgment are uncontroverted by Debtors.

2. There are no material questions of fact and summary judgment is appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment of the Trustee is granted and the Court declares the following property to be property of the estate.

a. All crops planted after October 8, 1992.

b. All government payments associated with crops planted after October 8, 1992.

c. All crops growing upon the leases deemed rejected.

d. All claims against Charles R. Underwood, D. Benham Kirk, Jr. and/or Underwood, Bardrick & Kirk.

Dated this 14 day of July, 1993.

/S/Stephen J. Covey
U. S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE
JOHN C & WILMA L. DORMAN
Debtor(s) Case # 92-16654-C
Adv No. 93-1215-C

The enclosed documents was forwarded to the bankruptcy clerk from the district court clerk's office. Our office has been ordered not to file any pleadings of documents received from you without first obtaining leave of court, please reference the enclosed order. Should you have any questions please call me at 405-231-5146.

Sincerely,
/S/Mile Bailey
Generalist Supervisor

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:) Case No. BK-92-16654-C
JOHN C. DORMAN) CHAPTER 11
WILMA L. DORMAN)
Debtors)

JOHN AND)
WILMA DORMAN) Adv. # 93-01141-C
Plaintiffs)
vs.)
)
JACK CORNELIUS)
TRUSTEE)
Defendant)

JACK CORNELIUS)
TRUSTEE)
Plaintiff) Adv. # 93-01173-C
vs.)
)
JOHN AND)
WILMA DORMAN)
Defendants)

JOHN C. DORMAN)
WILMA L. DORMAN)
Plaintiffs) Adv. # 93-01215-C
vs)
THE FIRST NAT'L)
BANK OF HOOKER)
JACK CORNELIUS)
TRUSTEE, AND)
PAUL B. LINDSEY)
BNKRPCY JUDGE,)
U. S. EMPLOYEE)
M. BICKFORD)
S. ELLIOTT)

K. FINNELL)
J. HUGHEY, ALL)
ATTORNEYS AND)
DOE(S) 1-100)

PERMANENT INJUNCTION

This matter comes on to be heard upon the Court's own motion pursuant to 28 U.S.C. Section 1651 (a) and 11 U.S.C. Section 105 (a) and pursuant to the decision of the Tenth Circuit Court of Appeals in *Tripati v. Beaman,* 878 F. 2d 351 (10th Cir. 1989), and pursuant to the Order to Show Cause filed by this Court on July 14, 1993, IT IS ORDERED, ADJUDGED AND DECREED that Debtors are enjoined and restrained from filing any pleadings in the above described case or adversary proceedings or from filing any new adversary proceedings related to the above case unless represented by an

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1 (footnote) Title 28 U.S.C. 1651 (a) provides as follows:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Section 105(a) provides as follows:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be

construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

---

attorney authorized to practice law in the State of Oklahoma and the united States District Court for the Western District of Oklahoma or, if acting prose, without first obtaining leave of Court.

Dated this 21 day of July, 1993.

/S/ Stephen J. Covey
U. S. Bankruptcy Judge

In The United States Bankruptcy Court
For the Western District Of Oklahoma
In the Matter of
John C. and Wilma L. Dorman
Debtor
Case No. 92-16654 Ch 11

Transcript of
Proceedings had on the 3rd day of February, 1993, held in the sixth Floor Courtroom of 201 Dean A. McGee Avenue, Oklahoma City, Oklahoma

Before: The Honorable Paul B. Lindsey, United States Bankruptcy Judge for the Western District of Oklahoma.

Appearances:

For the debtor:	Mr. D. Benham Kirk, Jr. Mr. Charles R. Underwood Attorneys at Law 1001 N.W. 63rd St. Oklahoma City, OK
For First Nat'l Bank of Hooker	Mr. Michael Bickford Attorney at Law Bank of OK Plaza Oklahoma City, OK
For Pauline Jones and L. Westbrook	Mr. Stephen P. Elliott Attorney at Law Oklahoma City, OK
For U. S.	Mr. Mark Toffoli

Trustee Attorney at Law
Fourth Floor
201 Dean A. McGee
Oklahoma City, OK

Mary Garvin,
Rpr Court Reporter

Simmons Computer Transcript
8401 E. Memorial Road
Jones Oklahoma 73049
396-2812 789-0932

Proceedings
February 3, 1993

The Court: 92-16654, John C. and Wilma L. Dorman. You waited all this time to provide me with an agreed order?
Mr. Kirk: In part, Your Honor.
The Court: Oh.
Mr. Kirk: Ben Kirk and Charles Underwood for the debtors.
The Court: You might have understood by now that this has not been a good day for anybody.
Mr. Kirk: I sensed that, Your Honor. We'll try to be brief.
The Court: All right.
Mr. Bickford: Mike Bickford on behalf of the First National Bank of Hooker.
Mr. Toffoli: Your Honor, Mark Toffoli for the United States Trustee.
Mr. Elliott: Steve Elliott on behalf of Pauline Jones and L. Westbrook.
Mr. Kirk: Mr. Cornelius is back there as well, Your Honor.
The Court: I see him.
Mr. Kirk: Okay. Your honor, with respect to the motion to appoint a trustee, and

the debtors' response, and our position to the same, that has been resolved, as we indicated in a conference call earlier this week with the court. The debtor have consented to the appointment of a trustee. We have been in consultation with counsel for the movant and Mr. Toffoli with the U. S. Trustee;s office, and I believe we have everything worked out, and have an agreed order to present to the court.
The Court: All right. I wondered whether there was going to be a direction by the court as to who it had to appoint.
Mr. Toffoli: Your Honor, you're quite correct. The way the statute and the Bankruptcy Rules ar now structured, the Court orders a trustee be appointed, and make the appointment. Then, Your honor has to approve that appointment. I'll have the appropriate application and order to Your Honor today.
The Court: That's fine. I wouldn't have signed it if it had been left in there anyway.
Mr. Toffoli: For the Record, Your Honor, Mr. Cornelius will be named as the Chapter trustee.
The Court: All right.
Mr. Kirk: Your Honor, that leaves the remaining issue on today's docket being that of the approval of the debtor's disclosure statement. I believe there are only two objections which have been filed. Sorry, three. One by J. I. Case; one by Mr. Bickford's client, First National Bank of Hooker; and that of the office of the U. S. Trustee. The parties, I believe, are in agreement that

an attempt will be made to reach an agreement on the language for the disclosure statement within the next 24 to 48 hours, and we'll submit, hopefully, an agreed order approving that disclosure statement. It's our intention to do everything we can to resolve the objections amicably by including the language that they want or language to that effect.

The Court: They have not been resolved as yet:

Mr. Kirk: No, they have not, Your Honor. We have been talking. We don not have a draft yet. It's being revised this morning. we worked on it some yesterday.

The Court: But you have no doubt but that resolutions will be obtained.

Mr. Kirk: I believe that to be the case, Your Honor.

The Court: Do you feel that way?

Mr. Bickford: Yes, Your Honor. I believe we can work -

The Court: Does Mr. Gooding feel that way? He's not here. He's usually here when he has a problem.

Mr. Kirk: I might tell the court that I spoke with Mr. Gooding by telephone this morning. I tried to call him yesterday, and he was out of town. He returned it this morning. I asked him, since his objections essentially incorporated the objections of the other two objecting parties, that if we satisfied them with respect to the disclosure statement, if he in turn would be satisfied. And he advised that would be the case.

The Court: All right. I'll give you 72 hours to resolve it and get an order to me signed off on by everybody who is objecting.

Mr. Kirk: Your Honor, that takes us into the next potential phase of this case, notwithstanding the appointment of the trustee. And, if the Court would recall, the debtors; period in which to obtain acceptance of any plan that they might propose expires on March 1st. For that reason I would like to know if the Court would entertain setting a confirmation hearing.

The Court: The exclusivity period may expire. Or do we have an absolute deadline set in this case?

Mr. Kirk: We had a reduced time with respect--

The Court: All right.

Mr. Kirk: - to the exclusivity and acceptance, Your Honor.

The Court: All right.

Mr. Kirk: Obviously, the trustee and his counsel will want to have some input into this process, but for purposes of today, I would like to know if the Court would set a tentative confirmation hearing, assuming we present an agreed order regarding the approval the disclosure statement with the 72 hour parameters that the court has set, that the Court would entertain shortening of the notice of the confirmation hearing so that we could have our confirmation hearing and that he debtors could have an opportunity to try to gain acceptance before that period expires.

The Court: What is that date:

Mr. Kirk: March 1st.

PUBLISHER'S NOTE:

THE FOLLOWING PAGES WERE UNAVAILABLE FOR FILMING:

56 & 57

March 1st is that other parties in interest may file competing plans.

The Court: Well, I can control that. I can't control their filing it, but I can sure control whether they screw up the process while doing it.

Mr. Bickford: Your Honor, I believe that's where we'll be in this case. I don't want to mislead the Court. I believe if it goes past March 1st. Which is the date that the debtor agreed to in the cash collateral order, and that my client agreed to, and the Court approved, there will, in fact, be competing plans, at least one that will be filed, and there possibly will be others. So that is the case. I don't want to mislead the Court.

The Court: Mr. Cornelius, if you have the opportunity to look at the property in question, review the disclosure statement and plan, presumably you are going to have -- you're going to ask for the employment, for the authorization to employ counsel in this regard -- if you and your prospective counsel have had the opportunity to go over the documents that have already been filed, even though the Court's shortened time, you will still have the opportunity to object to confirmation of the plan in any event. The only thing you would not have is the opportunity to object to approval of the disclosure statement. Is that going to disadvantage you unnecessarily?

Mr. Cornelius: It will not.

The Court: In that case I'm going to shorten the time on the filing of objections to confirmation. This is assuming that I get an order before close of business on Friday, approving he disclosure statement, which order should include the following dates: Disclosure statement and plan should be transmitted to all creditors with sample ballots and balloting instructions. I assume you can be ready to do that no later than Monday; is that correct?

Mr. Kirk: We will make that work, Your honor.

The Court: No later than February 8. Ballots will be required to be returned no later than February 26. Objections to confirmation will be required to be filed -- I just thought of a problem. I'm going to be in Tampa, Florida, from the 28th of February to the 13th of March, working six days a week, I might add. Does that mean we have to have this confirmation hearing on the 26th: The order that I signed says you have to obtain acceptances before the 1st of March. It doesn't say the plan has to be confirmed by the 1st of March. Is that right?

Mr. Bickford: Your honor, I believe that's the language in the statute. It's 1121.

The Court: You can obtain acceptances well in advance of the hearing on confirmation. Well, that is the language in 1121, whatever that section is.

Mr. Bickford: What I think the import of that is, is that a party in interest, if they have not received, the plan has not been accepted by all classes by that time, then competing plans can be filed.

The Court: You're saying that presupposes that a hearing be held at which that has been demonstrated? I'm not--

Mr. Bickford: Frankly, I don't know what that means, but it says that no hearing is necessarily required, but I guess if there were unanimous acceptances, that a competing plan could be -- by each class - that a competing plan could be filed.

The Court: Mr. Kirk, will you be ready for a confirmation hearing on the 26th?

Mr. Bickford: If that's the only choice we have, Your Honor.

The Court: That's the only choice you have. So i'm going to require that the plan be transmitted along with the disclosure statement, ballot, and ballot instructions by February; that the tie be shortened for the filing of objections to confirmation and for the return of ballots February 24, close of business, February 24, and that a hearing on confirmation be held a 9 o'clock a.m. on February 26.

Mr. Kirk: Your Honor, May I ask the Court;s consideration of the change in one of those dates?

The Court: What's that:

Mr. Bickford: The general process within this district is that objections to plan confirmations are filed, and then the parties may have some opportunity to try to resolve them in advance of the confirmation hearing. And with that in mind I'd like to know if the Court would entertain objections being filed by the 22nd, so that we would have sufficient time to try to negotiate with creditors.

The Court: That's only two weeks after you would have mailed. It's less than two weeks after they have received the plan and disclosure statement. That's an awfully short fuse.
Mr. Kirk: In that case, Your Honor, may we have in the order that the objections are to be transmitted to our office by facsimile as opposed to mail, so that we-
The Court: Facsimile and --
Mr. Kirk: And mail. So that we can see them as soon as possible?
The Court: You can put that in there. Put your fax number in there. This is an awfully short fuse, anyway, and i'm not real comfortable with it. I would have liked it a lot better had you rushed the disclosure statement hearing so that we would have had enough time before March 1. But that didn't happen.
Mr. Kirk: Well, there are some dynamics at work here, your Honor, and we just have to deal with them.
The Court: Well, it certainly sounds like it.
Mr. Kirk: We may not be able to get it done, but we'd like to have our opportunity.
The Court: It's going to be interesting to me to see what Mr. Bickford's client is going to do with a plan that is filed two days before a confirmation hearing on one a previous one was held, if that occurs.
Mr. Bickford: I think I'm unclear --
The Court: I;m just saying, if we don't make it by March 1 and your client files a competing plan, it is unlikely I'm going to delay the other plan's

confirmation if that hasn't happened before March 1, while yours goes through the entire process of disclosure statement, balloting, and confirmation.

Mr. Bickford: All right.

The Court: Now, that is not necessarily a word to the wise, but it puts the Court in difficult situation. But we'll try to get it done on the 26th.

Mr. Bickford: All right, your Honor.

The Court: If not, I, except in extreme All right, your honor. Except in courtroom emergencies, I'm going to advise everybody that you're not to go to some other judge in this courthouse and try to get anything accomplished in ths cas while i'm gone without making every effort to contact me first. Thank you.

Mr. Bickford: Thank you, Your Honor.

(End of Proceedings)

Certificate

I, Mary Garvin, CSR, RPR for the State of Oklahoma, do hereby certify that the above-entitled matter was reported in machine shorthand by me, and said machine shorthand notes were later reduced to manuscript form, and that the foregoing pages contain a true and correct transcript of the matter had as aforesaid.

/s/ Mary Garvin, CSR, RPR

In The United States Bankruptcy Court For the Western District of Oklahoma

In the matter of: John C. and Wilma L. Dorman, Debtors Case No. 92-16654 Ch 11

Transcript of Proceeding had on the 23rd day of February, 1993, held in the Sixth Floor Courtroom of 201 Dean A. McGee Avenue, Oklahoma City, OK

Before: The Honorable Paul B. Lindsey, United States Bankruptcy Judge for the Western District of Oklahoma

Appearances:
For Debtor: Mr. Ben Kirk

1st Nat'l Bank Hooker, OK	Mr. Michael Bickford Bank of Oklahoma Plaza Oklahoma City, OK
Ch 12 Trustee	Mr. John Hughey 500 Bank of Oklahoma Oklahoma City, OK
Pauline Jones and L. Westbrook	Mr. Steven Elliott Attorney at Law Oklahoma City, OK

Mary Garvin, RPR
Court Reporter

PROCEEDINGS
(February 23, 1993)
The Court: 92-16654, Johm C. and Wilma L. Dorman. Appearances, please.

Mr. Elliott: Steve Elliott on behalf of Pauline Jones and Ann Westbrook.

Mr. Bickford: Mike Bickford on behalf of First National Bank of Hooker.

Mr. Hughey: John Hughey on behalf of Jack Cornelius, trustee.

Mr. Kirk: Ben Kirk, Your Honor, on behalf of the debtors.

The Court: All right. This is a motion to vacate order extending tie to assume or reject executory contracts and/or expired leases, and motion for order compelling immediate surrender of the property by Pauline Jones and Ann L. Westbrook. Mr. Elliott, it;s your motion.

Mr. Elliott: Your Honor, pre-petition my clients leased approximately 1600 acres to the debtors. An order for relief was entered in this case on October 9, 1992. Sixty-one days later there was a motion for extension of time to extend time to assume or reject. Under 364(d), under our reading of that, that means that there was an automatic rejection of those leases at that point, so it wasn't a timely motion to assume, or reject, or extend. After that time the trustee was appointed on February 4, 1993, I believe. Subsequently, the debtors, who were no longer the representative of the estate, filed another motion for an extension. I discovered either in mid or toward the end of January that an order had been entered well after the time on the first motion for an extension; and, in fact, were granted that. That brought my motion for th vacation and the immediate surrender on file. I believe under the facts of this case 564(d) requires that those leases have been rejected and that we're entitled to immediate surrender of th property.

The Court: Mr. Kirk.

Mr. Kirk: If the Court will please bear with me, I'm somewhat anxious about this presentation, more so than I might normally be. As I perceive the issue before the court, Your honor, the legal question is whether or not 365(d) (4) is jurisdictional with respect to the automatic rejection provision thereof. I've presented the Court with a response yesterday in which I elaborated to some degree on a line of cases which suggest that the bankruptcy court is court of equity notwithstanding the operational provisions of 365(d)(4) that either extensions may be granted out of time or the right to assume leases may be granted out of time by the Court under the equitable doctrines of waiver and estoppel I'm not here before the Court today to try the issues of waiver and of estoppel, my interest today, Your Honor, is urging the Court to adopt the logic of those cases, which finds that waiver and estoppel may, in fact, apply in tis scenario and may give the court the ability to operate out of time of the original 60-day period notwithstanding 365 (d) (4). This is, to the best of my knowledge and belief, Your Honor, an issue of first impression within the state of Oklahoma, and I find no reported decision out of the tenth Circuit Court of Appeals in this regard. I believe, Your Honor, that if the Court examines the logic of the line of cases cited in the response, notably the *Lew Mark Cleaners Corp.* case in which Judge Duberstein goes to great length to explain the rationale for applying waiver and estoppel to get past this seemingly jurisdictional barrier under 365 (d) (4), that this is the better view. And I'd ask the Court to adopt it today. I need to address, Your Honor, some of the facts as it relates to my responsibilities or lack thereof in the context of this case. The issue relating to the motion to assume or reject or alternatively to extend the time was addressed with members of Mr. Elliott;s firm. They were advised that I was going to tile a motion to extend the time, and I did so. Regrettably and unbeknownst to me until only very recently, the motion was filed on the 61st day. I'm not happy about the situation. I'm sure the Court is not. But when it was brought to my attention that the motion itself was untimely, I discovered that no one had presented an order. The order was presented to Your Honor with the following explanation, as I recall, and I would not presume to deceive this Court in any manner. I've practiced here a number of years. It has never been my intention in any way, shape, or form to practice nay type of deception, especially before Your Honor. I presented the order and advised at the time that there were parties that suggested or had raised the issue that the motion to extend may not have been timely filed, but that not one had objected. The court advised that you would not, you would enter the order, there being no objection filed, or no other communication to the contrary, but that you would not permit me to hide behind the order and use it as a sword, at which time I indicated to the Court I fully understood that, but that I would be asserting issues related to estoppel and other possible defenses if it became an issue. It was my understanding that the Court was in accord with that viewpoint, that on that basis the Court entered the order and the order was filed. We have ad some problems in the handling of this case with our office. And although I don't consider myself a hundred percent at fault in the situation, I'm the attorney who was largely responsible by default for handling these matters, so I have to accept responsibility. This is a farm bankruptcy reorganization proceeding, Your Honor. And the lease ground which Mr. Elliott's clients are wanting back now, the crops have already been planted, and it represents about one-half of the acreage involved in reorganization efforts before the Court. I believe that this case is reorganizable. I believe with modifications that the trustee believes that to be the case. I ask the Court --- and this is difficult for me to say, Your Honor, I apologized - but I ask the Court, if the Court;s angry, or upset, or inclined to penalize anyone in third cas, that I'm the one standing before the Court that should be penalized and not the debtors. The trustee has an interest in these leases and these leased

grounds The creditors do. And in the cas of in re Bonton Restaurant and Pastry Shop, Inc., at 52 B.R. 850, Your Honor - I want to read to you the following footnote at page 853: "Assumption of a valuable lease is as much in the interest of creditors as it is in the interest of the debtor. The court notes that a deemed rejection may be a product of collusion, or the debtor-in-possession's malfeasance, negligence, or mistake, which may improperly penalize creditors for th debtor's failure to act. It would appear, therefore, that the circumstances surrounding the deemed rejection that is contested by a party in interest be taken into account by the Court."
The point being, Your Honor, that if you find that 365(d) (4) in this case is jurisdictional as a matter of law and do not afford the debtors an opportunity for an evidentiary hearing on application of doctrines of waiver and estoppel, you're not just penalizing the debtors, you're penalizing the other creditors in the case as well. I ask the Court to be mindful that this is, indeed, a Court of equity founded on equitable principles, and I leave it in you hands.
The Court: Mr. Hughey. You have filed on behalf of the trustee a response, which, as I read it, pretty tracts Mr. Kirk;s response.
Mr. Hughey: That's correct, Your Honor. And I don't think in either of our briefs or any of th three pleadings that were filed, could nay of us say what the law was int his jurisdiction. There is one case within the Tenth Circuit, and it's a

Utah case, that has a footnote that recognizes the doctrine of waiver and estoppel, but that;s the only thing locally we can find. There are three excellent Southern District of New York opinions, one, Conrad Duberstein --

The Court: That's the Eastern District.

Mr. Hughey: Eastern District. I'm sorry. What did I say? Southern?

The Court: Yes.

Nr. Hughey: Eastern District. The logic that Mr. Duberstein used was that if the court was bound to follow in every instance the doctrine of a very rigid construction, it would defeat the purpose that was put into the Code by the Congress in that these provisions were put there to benefit the lessors, and, obviously, if it's put there for the lessors, then they can waive it. And, so, I don't know what the law is. I do know the facts are very tough in this case. It would be Mr. Cornelius's testimony, I'm sure, that these leases are absolutely central to this reorganization. And had cases make bad law, or I think that it's in these cases like this that the rigid construction of the Code bring in the common law principles of waiver and estoppel. I believe that's really all the remarks I would have about it.

The Court: Mr. Bickford.

Mr. Bickford: Your Honor, my client has no position in this matter. We're just here as a spectator.

The Court: All right. The Court notes the appearance of Mr. Toffoli of the office of the United States Trustee.

Does the trustee have any input it wishes to make in this matter?
Mr. Toffoli: We do not, Your Honor. We're really here as a, just a part in interest.
The Court: Does the standing, does the trustee who has been appointed kind of late in the game, Mr. Cornelius, wish to be heard?
Mr. Cornelius: Your Honor, I would make a statement, yes. I've been to the farm, spent part of last week out there. I've had numerous discussions with ht economist, Mr. Mike Bertram, in the case. We've met with the bank and with the bank's counsel. And what Mr. Hughey represented to you is absolutely the truth, that these leases are important tot reorganization as a reorganization plan is drafted at the present time. There might be a few even minor changes at that, but at any rate, those leases are important. It the leases are not included in the property, with the property in the farm, we'll just have to go back to the drawing board and j=Completely redraft, and take a look at the thing, and see if it will cash flow without the irrigated land, because these leases cover all of the irrigated land. And if it will not, if you don't have the irrigated land, there's a good possibility it won't cash flow, and it would be, that it would be remanded to a --
The Court: Liquidation
Mr. Cornelius: - to a liquidation plan, yes, sir.

The Court: All Right. Mr. Elliott, you may respond.

Mr. Elliott: Your Honor, I hear everybody talking about waiver and estoppel, but I don't hear them saying exactly what it is that's been done or should have been done that constitutes waiver or estoppel. Certainly, if the indications by Mr. Pringle of my firm that the original extension would not be opposed, if that's going to constitute either estoppel or waiver, then certainly the ?court has the basis to rule on that. That, in fact, did occur. As to any other facts and circumstance that would fall under the waiver or estoppel category, frankly I don't know what those are. So it's very difficult for me to respond to those. I do think that there is a second issue here. We do have the motion being untimely. The second issue is that the period for assumption or rejection was extended to February 8. The only motion that was filed before the expiration of that time period was filed by the debtors, who were no longer debtor in possession. They were no longer the representative of the estate, and I'd certainly take the position that they don't have standing to seek that extension. The trustee did not seek an extension. So, regardless of the disposition of the first issue, it seems to me that the second issue pretty much leads to the same place. Those leases have been rejected.

The Court: All right. Mr. Kirk.

Mr. Kirk: Well, briefly, Your Honor, I should have in my presentation in chief addressed what I consider to be the inapposite cases cited by Mr. Elliott in his response, and I will stand on discussion on those cases and why I think they're either inapposite or distinguishable from the case at bar as set forth in the response. I indicated to the Court, Your Honor, that crops were growing, had already been planted post=petition. Some have been harvested. We have continued to perform under the lease and done what we were required to do. The leases in question are not in default, so there's no issue of adequate assurance or anything looming out there. The plan itself, which was filed initially on December the 21st, indicated that all leases, all unexpired leases and executory contracts were going to be deemed accepted or rejected at the time of th confirmation, which I believe 365 allows. I think there ar, taking into account th fact that we relied on the representation of Ms. Jones and Ms. ??Westbrook's counsel that they would not object to at least the initial extension of time, and the fact that we've continued to perform under the leases and have given every indication that we intended to assume these leases, that would lay the foundation for waiver an/or most likely, estoppel, Your Honor, to be honest. I think that;s the direction we would be heading if we have full-blown evidentiary hearing.

The Court: Well, you had mentioned in your initial presentation, I believe, something on the order of, if the Court declines to grant the debtors and evidentiary hearing -- have you asked for an evidentiary hearing? I thought this was going to be the hearing, whatever anybody wanted to put on.

Mr Kirk: My perception, Your honor, given the shortened notice and my discussions with Mr. Elliott that our initial concern before the court was the threshold legal issue relating to jurisdiction. And that --

The Court: Why don't you tell me -- apparently, Mr. Elliott has conceded that Mr. Pringle said that he did not, on behalf of his clients, that he did not intend to resist a motion to extend the time. That apparently is not at issue. What would an evidentiary hearing do: What would it provide in the way of additional facts?

Mr. Kirk: I think if the debtors would be able to testify, Your Honor, as to what they have done in connection with performance under the lease post-petition both within the initial 60-day period and beyond.

The Court: Do you know what that is? Are you going make an offer of proof: Now, you said you -- you mentioned the crops have been planted and the implication was that was to the debtor's detriment because they have expended sums in the belief that this lease would be assumed. But you didn't say when that occurred, and the timing, it seems to me may be important.

Mr. Kirk: The crops, Your Honor, were planted in the month of October and November for the following, for the coming crop year.

The Court: So that was during the 60-day period.
Mr. Kirk: Yes. But they ave also harvested milo since that time, delivered it to the elevator for the account of Mr. Elliott's clients. And let me launch into these facts here, Your honor. Understand that I don't have a full-blown offer of proof. But let me tell you what I think the testimony would show.
The Court: All right.
Mr. Kirk: With the understanding that there may be other facts out there yet to be brought before the court. They have paid pasture rents sometime very close in time to when the initial 60-day period expired. I don't know whether that is before or after. They have paid for bales that were swathed from the land belonging to Mr. Elliott;s clients. Mr.s. Jones has singed papers relating to milo for government payments resulting from the recently harvested ci=rops. They have gone to great lengths to negotiate the use of certain cash collateral, to use cash collateral to buy a place which is a sp=eparate contract, Your honor, but the same party buying it from Mr. Elliott;s clients. If they knew they were not going to be abl to keep the leases, they would not have gone to that trouble. And I don't think they would have, they would tell you that they would not have ad an interest in holding onto that homestead property that they're buying from Mrs. Jones. They continue to work the ground in connection with the ongoing crops. That's -- those are th things that come to mind, your Honor.

The Court: All right. Any response, Mr. Elliott?

Mr. Elliott: Very briefly. Your Honor, one thing you did not hear from Mr. Kirk was that there was any indication from our clients to the effect that they were perfectly comfortable with going forward with the leases, as having been suggested, at the petition date. There's never been an indication to him. There has been an indication we were willing to discuss the matter with them to see whether or not there was an agreed resolution to it. That hasn't occurred. And in terms of who responded to what and when, I was never served with anything by th debtors of no one in my firm was served anything by th debtors by February 5. That explains why there wasn't any more rapid action in this case than there has been.

The Court: That was the day that the second motion was filed.

Mr. Elliott: On or about the 4th or 5th. The 5th is when I received a copy of the second amended disclosure statement by telefax from Mr. Kirk. Prior to that time I had received no notice or anything from his office. All the servile that I had in this case had been from Mr. /Bickford's. office. In terms of payments and whatnot that may have occurred during the 60-day period, obviously, the debtor is required under 365 (d) (3) to continue performance. As to other matters, if they've been continuing to use these properties, we're entitled to an administrative expense under the case that I have read. And, finally, in terms of any indication in the plan that there is going to be an assumption of these leases, as I said , number one, I never had a copy of that until February 5th; and, number two, 1123, which provides for assumption in context of a plan, expressly provides that that's subject to 365.

The Court: As Mr. Hughey has stated and is certainly clear from Mr. Kirk's presentation, this is a difficult case. And if the motion is granted, it will undoubtedly substantially disadvantage the debtors in coming up with a reorganization plan that can be confirmed. However, it is also clear to this Court that ht initial issue, as Mr. Kirk has also stated is the legal issue of whether the lease in this instance, which has admittedly been, or I assume it's admitted, the motion was filed on the 61st day, the language of 365(d) is pretty clear that you have 60 days or it's deemed rejected. The question then becomes whether or not there is some way for the Court to determine that deemed rejection was inoperative or whether there is a waiver or estoppel in the case. There are a number of things that I think I should address. First of all, I regret that I do not have any direct recollection of the conversation which Mr. Kirk says took place when I was presented the order on February 8. I have no doubt whatever but that what he says is exactly true. I simply have no recollection of it. Matters such as these are somewhat embarrassing to the Court because I think in the circumstances, had the Court taken the time to count, the Court wouldn't have signed that order, because the motion was untimely filed. And the statute very clearly says, "such additional time as the Court for cause with such 60-day period." I might note that in the debtor's response they add the work "or" within such 60-day period, and the work "or" isn't in the statute. So that's not -- I don't think that was intended to be devious either, but it might have given rise to a different interpretation. This really has been a comedy of errors. The motion was filed one day out of time. It was filed on the 61st day. Therefore, the Court certainly did not within such 60-day period take any action. In fact, when there was no response to the motion which requested an extension to February 8, no order was presented to the Court. Under the local rules of this court if no order is presented within 20 days after the expiration of the appropriate notice period, the motion may be deemed -- I can't think of the word.

Mr. Underwood: withdrawn.

Mr. Kirk: Stricken.

The Court: -- Stricken-- I beg your pardon -- may be stricken by the Court or simply deemed to be of no force and effect. This Court has, frankly, not strictly adhered to that rule, has not strictly enforced it. It is being enforced more frequently now because the clerk's office has the appropriate manpower and wherewithal to track these matters, and the Court doesn't have to put a tickler out on every motion that's filed. nevertheless less, no order was presented until February 8, that being the day that the extension was effective to. A subsequent motion was filed on February 5, three days earlier, to which Mr. Elliott takes exception, because at that time a trustee had been appointed, and the trustee was then the representative of the estate as opposed to the debtors, who had been debtors in possession prior to the appointment of a trustee. It is this Court's view that the language -- Well, let's go back again. In looking over this in preparation for this hearing, the Court probably should have wondered aloud at the time the order was presented to it -- and as everyone knows I don't read these motions when they're filed; I read them when they're set down for hearing, when there's a response. But 99 percent of the motions that are filed are not contested and an order is presented and they go away. But the Court probably would have wondered aloud as to why an extension had to be filed at all. The only reason for the extension would be to cover an unexpired lease of non-residential real estate. Anything else the debtor has until the confirmation of a plan within which to assume or reject under 365 (d) (2). So, I guess, the Court would have wondered, why are you filing something that says you want additional time to assume or reject an executory contract or an unexpired lease of residential real property or personal property when that isn't necessary? the motion was filed to protect this lease.

That's the only thing that was necessary to protect. Everything else the debtor had until confirmation to deal with one way or the other. Therefore, the style of the motion for additional time probably was more extensive than it was necessary, and the Court probably should have noticed it and inquired about it. Everybody says they can't find any law in the Tenth Circuit, and I'll grant you there is none that I know of on 364(d). And there's very little, as Mr. Hughey points out, on waiver and estoppel in this area. However, there is a Tenth Circuit decision August 31, 1990, in a different context, that I think, although not controlling, is certainly persuasive. And that's the case of *in re Brayshaw*, B-R-A-Y-S-H-A-W, 912 F2d 1255. In that case the Court was construing Rule 4003(b), which has to do with objections to exemptions, provides in material part the trustee may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors unless within such period further time is granted by the Court. Rule 9006(b) allows the enlargement of time periods, but specifically provides that the Court may enlarge the time for taking action under 40003(b) only to the extent stated in that rule. Now, in this case no order had been entered within the 30-day period, and, in fact, the motion was filed on the last day to extend the period. No order was entered. The Court in very short opinion says: "There simply is no room in the wording for construing 4003(b) or 9006(b) to permit granting an extension of time to file objections outside the original 30-day time limit. We recognize that this may cause problems for many bankruptcy courts with crowded dockets or when the motion has been filed,: as here, "on the last day. But that is a matter for the drafters of the Bankruptcy Rules who appear to have thought precise time limitations were important in the situations presented here. We hold that the bankruptcy court was without power to grant the trustee's motion for an extension once the original period expired."

Although Rule 9006 isn't implicated in this case, and although, of course we're not dealing with 4003, we are dealing with vary similar language, the language being: "...If the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee with 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor."

All right. "Within such 60-day period." Rule 4003 has a 30-day period, and it says "unless within such period further time is granted by th court." That to me is very persuasive of what the Tenth Circuit would say if this issue was presented to them. The lease has been deemed rejected at the end of the 60 days. There is the additional point --- and this is irrespective of the fact that a motion was filed by the debtors on February 5 -- that no action was taken by the Court prior to February 8, which is th only date to which any extension was granted. The court granted an extension to February 8, bu there was no further extension granted. The motion was filed, but no order was ever presented. That was going to take it, I believe, into March. So it seems to me that we really have two bases for the lease to be deemed rejected. And under 365 (a) (4) for the trustee to be under the obligation to immediately surrender the nonresidential real property to the lessor. Now, we get to the point of whether waiver or estoppel has any applicability. It is interesting to me that the parties favoring the waiver or estoppel argument rely heavily on the *Lew mark cleaners corporation* case out of the Eastern District of New York. Chief Judge Duerstein does, indeed, spend a considerable amount of time talking about waiver and estoppel and quoting form cases which take the position, probably an appropriate position, that there's a lot of problems that can arise by these deadlines being enforced. And it is interesting to me that then he concludes that the landlord's acceptance of rent after the Chapter 11 debtor's lease was deemed rejected by th passing of the 60-day period was not a waiver of automatic rejection. The conclusion in the case basically rejected the waiver argument, or at least found that it wasn't present here. And that was on the basis of rental having been tendered and accepted after the 60-day period. The argument remaining, it seems to me, is that this court as a Court of equity really has the obligation to protect these debtors from their attorney's inaction, from perhaps their own action or inactions, because with this lease they can present to the Court what is believed to be a confirmable plan. This Court, I suppose, is a Court of equity, although the Supreme Court in recent opinions has made it pretty clear that does not mean the Court can do anything it wants to do just on the idea that this is equity. I believe that in the circumstances here presented -- and I take no pleasure in doing this; I recognize that in doing os, the result may be harmful to the debtors, it may be harmful to counsel for the debtors, it may be harmful to the other creditors of the debtors. I don't know that. But I believe, based on the actual language of the statute and on the Court of Appeal's language with regard to a very similar provision in a bankruptcy rule, that this court was without power to grant the request for an extension of time. The Court, therefore, must in my view vacate the order that it entered and direct the trustee to immediately turn over possession of the real property covered by the lease to the lessor. Is there anything further?

Mr. Kirk: May I address the Court, Your honor:

The Court: You may.
Mr. Kirk: The Court having made its ruling, it is the debtor's and trustee's position that the crops in ground remain part of the estate notwithstanding having to surrender the property. And we may need to address the issue of ownership of those crops.
The Court: The court can treat that as an oral motion, if you see fit.
Mr. Kirk: I hat to deal with something as significant as this issue -- the trustee is here an his counsel is here, but I wanted to bring this to the attention of the court.
The Court: Well, you don't have to bring it. It doesn't have to be decided today presumably. It can be the subject of a further motion. I don't think you would be foreclosed from raising this issue. Mr. Elliott, do you --
Mr. Elliott; no. You Honor.
The Court: You wouldn't defend on that ground, would you?
Mr. Elliott: No, Your Honor. Mr. Kirk and I may be able to work that issue out.
The Court: All right.
Mr. Kirk: The second issue, Your Honor, which is more prevalent -- I'm aware that this court intends to be absent from this jurisdiction for two weeks beginning sometime this next week-end.
The Court: I'll be leaving Sunday.
Mr. Kirk: The 10-day period within which to appeal the Court's ruling or to seek leave to file an appeal on an interlocutory basis will expire during the court's absence. And I suppose that if we were to timely file a motion that

the Court would consider it upon its return. But I was concerned about the passage of time with your pending absence.

The Court: If you file a motion, and we do not have language like we have in 365(b) and Rule 4003(b), then, the opposing parties have 18 days within which to respond. And the matter can -- I'll be back 18 days from now.

Mr. Kirk: Okay.

The Court: So, unless there's some reason to hurry this thing through, and if there is, I can be contacted any time in Tampa between cases in the evening, and I can deal with it, or I can speak with Judge Teselle or Judge Bohanon and ask them to deal with it for me. But I don't know why it would need to be dealt with within this two-week period.

Mr. Kirk: I guess the concerns I have, Your honor, is the impact that the loss of the leased ground has on the overall case itself.

The Court: Well, Mr. Kirk, I think I recognize what the impact is or what i've been told the impact is expected to be, but in that case, as you point out, I have made my ruling. If I'm wrong, somebody is going to have to tell me that. But I'm not going to change it.

Mr. Underwood: No, Your Honor, I think -

The Court: Mr. Underwood.

Mr. Underwood: - what I was trying to get Mr. Kirk to address is we have a confirmation hearing set for Friday, I believe. And we're going to have to propose an alternative plan due to this ruling.

The Court: Well, that confirmation hearing can be set off.
Mr. Underwood: Okay. Thank you, Your Honor.
The Court: Does anybody have any problem with that? We do have a problem, don't we Mr. Bickford?
Mr. Bickford: If I might, Your Honor --
The Court: Because you have a cash collateral order that expires.
Mr. Bickford: Let me try to explain the setting of the confirmation hearing, as I understand it. When the trustee was appointed by operation of law under 1121, the exclusivity period was deemed terminated. There was no longer an exclusivity period for the debtor to file a plan.
The Court: All right.
Mr. Bickford: By agreement on the entry of the order appointing a trustee, my client agreed not to file a competing plan until after March 1st. So it's not because of the statute, it's because of an agreement that we have put off the time for filing a competing plan.
The Court: I understand that, but that period -- you not --that agreement will not be modified if I put off the confirmation hearing. In other words, you client may very well file a plan.
Mr. Bickford: That's right. Unless there is a subsequent agreement to extend that time.
The Court: All right. Mr. Elliott, you client doesn't have any problem at this point whether or not the confirmation goes foe=rward.

Mr. Elliott: No, You Honor, it does not.

The Court: Mr. Hughey, I assume that the trustee with the exception of the fact that this agreement may bring us another plan, a competing plan, if you will, that there would be no objection in the circumstances to the continuance of the confirmation hearing on the debtor's plan.

Mr. Hughey: That's correct, Your Honor. We would like for Mr. Bickford to agree to extend the, to waive his --

The Court: I know you would like that, but I don't think he's willing -- he's certainly not in a position to do so having not known what was going to happen today.

Mr. Hughey: Yes. But I think it is absolutely necessary. I cannot imagine, can you, that we have a plan ready by Friday?

The Court: Well, I think even if you have a plan ready by Friday, your disclosure has got to be inadequate if this massive amount of acreage isn't in the plan.

Mr. Hughey: That's correct.

The Court: So, I think you're back to square one. And if Mr. Bickford's client wants to jump in and join the fray, he is open to do so. All right. Mr. Elliott, would you prepare an order, please?

Mr Elliott: Yes, Your Honor.

The Court: Within Five days. Yes sir.

Mr. Hughey: Your Honor, might we set an alternate date for a hearing on confirmation of the plan?

The court: Well, I don't think we can. I think we're going to have to go back to a hearing on approval of the disclosure statement. I mean, I don't see your proposing a plan that is not going to require a major modification to you disclosure statement.
Mr. Hughey: That's correct. That has to be correct.
The Court: So, let's see, the next scheduled disclosure statement and confirmation hearing is March 31. That would, seems to me, give plenty of time for you to give 25 days notice of it even after you have redrafted the disclosure statement, after the debtor has redrafted the disclosure statement.
Mr Hughey: That will give us something to shoot for.
The Court: So, let's set March 31 as the date for hearing on a modified or amended disclosure statement with the proviso that the notice of that hearing must be given to interested parties along with copies of the disclosure statement at least to the major creditors at least 25 days in advance of that date. Anything further? All right. We'll be in recess.
(End of Proceedings)

In the United States Bankruptcy Court
For the Western District of Oklahoma

In the matter of:
John C. and Wilma L. Dorman
debtors Case No. 92-16654 Ch 11

Transcript of Proceeding had on the 26 th day of February, 1993, held in the Sixth

Floor Courtroom of 201 Dean a. McGee
Avenue, Oklahoma City, Ok

Before: The Honorable Paul B. Lindsey,
United States Bankruptcy Judge for the
Western District of Oklahoma.

Appearances:

For trustee	Mr. John Hughey Attorney at Law 300 Bank of Oklahoma Oklahoma City, Ok
For First Nat'l Bank Hooker, OK	Mr. Michael Bickford Attorney at Law Bank of Oklahoma Plaza Oklahoma City, OK

Mary Garvin, RPR
Court Reporter

PROCEEDINGS
(February 26, 1993)

The Court: 92-16654, John C. and Wilma L. Dorman.
Mr. Hughey: John Hughey for the trustee, Your Honor.
Mr. Bickford: Mike Bickford on behalf of First National Bank of Hooker.
The Court: Tell me about it, Mr. Bickford.
Mr. Bickford: Your Honor, this is a motion for emergency use of cash collateral by the trustee, and my client has an interest in the cash collateral. Notice has been sent by fax to all parties requesting notice. Mr. Kirk called me this morning and said that he

had a commitment in state court, but he had no objection to the relief requested in the motion. No other parties have -- I talked to Mr. Elliott, and he has no objection either. No other parties have made any overtures of whether they have a view one way or the other.

The Court: Mr. Elliott has not further interest in this I would think.

Mr. Bickford: That's right. He's easy to please now. The 14,000 or so which is proposed to be used by the trustee is necessary to meet some immediate operating meeds that are there on the farm that need to be attended to, cattle, and fuel, and other things that are necessities that re to be paid immediately. The motion requests and th parties have agreed, the trustee and the bank, that bank would receive a replacement lien on certain growing crops that would be based upon the debtor's projection of how much, how many acres of crop would yield this $14,000, and that replacement lien by agreement will be afforded a last source of collection of the bank's allowed claim, whatever it might be in th in case. So in other words as long as the collateral, which, as the Court knows by the motion, probably will be pending, the trustee, I believe, proposed a liquidating plan in this case, so long as the collateral which the Bank has satisfied its claim, then this replacement lien will not even be looked at to satisfy its claim, so we've place it in the last position.

The Court: These growing crops are not otherwise encumbered?

Mr. Bickford: That's correct.
The Court: And these growing crops are on land other than land owned by Mr. Elliott's client.
Mr. Bickford: That's also correct. This is owned land of the estate, Your Honor.
The Court: All right. Is that your proposal?
Mr. Hughey: It is, Your Honor.
The Court: Very well, it will be granted.
Mr. Hughey: Your Honor, one other thing we might mention, we've set the final hearing in this matter for the 23rd of March, if it please the Court.
The Court: All right. It's not likely that that's going to be anything other than an announcement either --
Mr. Hughey: That's correct.
Mr. Bickford: That's correct, Your Honor.
The Court: -- I would think since there's no objection.
Mr. Bickford: Thank you, Your Honor.
Mr. Hughey: Thank you, Your Honor.
The Court: Thank you, gentlemen.
(End of proceeding)